UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

***

PUBLIC HEARING ON
OZONE TRANSPORT SIP CALL
***

Washington Plaza Hotel
10 Thomas Circle, N.W.
Washington, D.C.
Tuesday, February 3, 1998

The above-entitled matter commenced, pursuant to notice, at 9:15 a.m.

MEMBERS PRESENT:

DICK WILSON, OAR
JOHN SEITZ, OAQPS
PAUL STOLPMAN, OAP
BRIAN MCLEAN, OAP
HOWARD HOFFMAN, OGC
TOM HELMS, OAQPS
KIMBER SCAVO, OAQPS
LYDIA WEGMAN, OAQPS
BILL BAKER, Region 2
MIKE SKLAR, OMS
JOE TIKVART, OAQPS
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MR. WILSON: Good morning. Thank you all for coming out today to attend the EPA public hearing on the proposed ozone transport rule.

My name is Dick Wilson and I'm the acting assistant administrator for air and radiation. We are here today to listen to your comment and analysis of our proposal to reduce the regional transport of ground-level ozone and its principal precursor, nitrogen oxides.

The proposal was signed on October 10, 1997, and published in the Federal Register on November 7, 1997.

Ground-level ozone is the primary constituent of smog. Smog causes hundreds of thousands of cases of respiratory illness, impaired lung function, and exacerbated incidence of asthma in the U.S. every year. Ground-level ozone can also reduce agricultural yields for many important crops such as soy beans, wheat and cotton. Nitrogen oxides, the pollutant targeted by this proposal, also contributes to acid rain and particulate matter problems when NOx harms sensitive waterways and estuaries, causing fish kills.

For many years scientists, meteorologist and air quality managers have recognized that air pollution is carried by the wind easily across the states' borders. We
know that emissions from upwind sources can adversely affect the air quality in downwind communities. Many states have found it difficult to demonstrate attainment of the National Ambient Air Quality Standards due to the transport of ozone and its precursors.

In the early 1990s many states were concerned that they would not be able to meet the ozone standards in a cost-efficient way unless steps were taken to reduce the amount of regional pollution coming into the area from upwind.

As a result, in 1994 the Environmental Council of States (ECOS) recommended the formation of the Ozone Transport Assessment Group known as OTAG. The ECOS sought the formation of the National Work Group to allow for a thoughtful assessment and development of consensus solutions to the problem of ozone transport.

The OTAG, a consortium of 37 states and the District of Columbia and environmental groups of industry working cooperatively with EPA, conducted a two-year comprehensive assessment of regional smog problems in the eastern United States. This proposal builds on the work of the OTAG.

EPA's proposed ozone transport rule, also known as the NOx SIP call proposal, seeks to reduce the interstate
transport of ground-level ozone pollution in 22 eastern
states and the District of Columbia.

As many of you know, ground-level ozone is formed
in the atmosphere by complex chemical reactions that
transform volatile organic compounds in nitrogen oxides into
ground-level ozone. Traditionally, ozone reduction
strategies have targeted volatile organic compounds. The
latest EPA OTAG modeling and analysis indicate that a
strategy targeting NOx would substantially reduce ozone
problems in the eastern U.S.

After two years of extensive modeling as well as a
weight of evidence analysis, EPA identified 22 states as
significantly contributing to ozone nonattainment problems
in other downwind states, and last July EPA made final a new
standard for ozone. At that time EPA announced an
implementation strategy for that new standard that would
take advantage of ongoing initiatives to ensure that states
could meet the new standard cost effectively.

This proposal is a centerpiece of that strategy.

If put into effect, this strategy will enable the vast
majority of cities to meet both the current and new, updated
ozone standards without imposing additional new local
pollution controls or measures.

EPA is proposing to require that states revise
their air quality strategies to meet specific budgets for nitrogen oxides. However, the proposed strategy does not mandate which sources must reduce pollution to meet the budget. States will have the flexibility to meet the pollution reduction targets by reducing emissions from the sources they choose.

Consistent with OTAG's recommendation to achieve NOx emission decreases primarily from large stationary sources in a trading program, EPA encourages states to consider electric utility and large boiler controls under a cap and trade program as a cost-effective strategy.

To ensure that reductions are as cost-effective as possible, EPA is also working with the states to develop a model market-based trading system for use by the states under which utilities that do not meet the reductions can buy and trade credits from utilities that exceed the reduction limit. This system already has been used successfully under the acid rain program.

The matter of interstate transport, as I mentioned earlier, has been taken seriously by a number of states. In addition, in August of 1997 Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, Pennsylvania, and Vermont all filed petitions with EPA, citing section 126 of the Clean Air Act related to
interstate pollution abatement. The petitioners have asked EPA to make a finding that utilities and other sources of NOx exacerbate ozone problems in the northeastern states. All the petitions target sources in the Midwest. Some of the petitions target additional sources in the South, Southeast, and Northeast.

We have agreed now with the petitioners to a schedule for dealing with these petitions that parallels the schedule for this rulemaking.

I want to stress that EPA has not made any final decisions regarding the ozone transport rule proposal. We are interested in hearing your opinions. For those who would like to submit written comments, the public comment period on this proposal closes March 9, 1998. A transcript of this hearing will be prepared. It will be available for inspection and copying at EPA's Air and Radiation docket office in approximately 30 days.

I would now like to introduce the EPA representatives here at the table.

On my right, John Seitz, director of the Office of Air Quality Planning and Standards.

On my left, Paul Stolpman, director of the Office of Atmospheric Programs.

Howard Hoffman of our Office of General Counsel.
Tom Helms of our Office of Air Quality Planning
and Standards.

Also here today at the staff table on my left,
Kimber Scavo, Lydia Wegman of our Office of Air Quality
Planning and Standards; Bill Baker of our Region 2 office in
New York City; Mike Sklar from our Mobile Source Office in
Ann Arbor; and Joe Tikvart from our Office of Air Quality
Planning and Standards in North Carolina.

A few ground rules for the hearing. I'm going to
call the scheduled speakers to the witness table up front
here in groups of three. We are asking speakers to limit
testimony to five minutes each and remain at the table until
all three speakers have finished. The panel may have
questions for the witnesses.

We know many of you have more than five minutes
worth of material to give us. We are happy to take a fuller
statement if you have one and enter it into the record.
Also, please leave it at the registration table if you
haven't already done so. If you do want to testify and
haven't checked in at the registration table outside, I
would ask you to please do that when you get a chance.

On this table and also on the witness table there
is a little light system to help you keep on schedule. When
you start speaking a green light will come on; a yellow
light will come on when you have about a minute left; and
then a red light will come when your time is up.

We have overhead and slide projectors if anybody
needs them.

We are planning to take testimony through about
11:30 this morning and then break for lunch and come back at
1:00. Our guess is we'll end about 3:30 this afternoon.
We'll see. Hopefully before the rain and snow arrive here
in D.C.

The schedule for tomorrow is roughly the same.
The hearing will start at 9:00 in the morning with a lunch
break from roughly 11:30 to 1:00, and we will plan to
conclude in the early afternoon.

One other point. This is an informal hearing. We
are not going to swear witnesses; there is no
cross-examination. As I said, this is a chance for us to
hear in person your thoughts and comments on our proposed
rule. For those of you who would like to add additional
comments or react to other people's comments, the hearing
record will be open, and you can submit those for the
record.

One other thing for the witnesses. When you begin
your statement, if you could identify yourself and your
affiliation for the record, we would appreciate that.
With that, we will start with the first three 
witnesses, Mr. Michael Wax, Mr. Peter Hamlin, and Mr. Danny 
Herrin.

MR. WAX: Good morning. I'm Michael Wax, deputy 
director of the Institute of Clean Air Companies, the 
national association of suppliers of stationary source air 
pollution monitoring and control systems equipment and 
services.

Many of our 55 member companies sell NOx controls 
and related equipment which will play a large role in 
compliance with the NOx limits to be promulgated in response 
to the SIP call.

Given the brief time allotted to me today, I would 
to make just two points.

My first and main point is that the NOx reductions 
in the SIP call proposal are eminently reasonable. These 
can be met with commercially proven cost-effective controls 
that are widely available.

Several technologies are available for reducing 
NOx emissions below RACT and Title IV levels, including gas 
reburn, selective non-catalytic reduction (SNCR) and 
selective catalytic reduction (SCR). I won't say anything 
about gas reburn. I believe probably Joel Bluestein will 
tomorrow when he speaks. But let me say a few words about
SCR and SNCR.

SCR has provided reductions to below .1 pounds per million Btu on coal-fired utility boilers, which is one-third below the .15 pound level used in calculations, and to .01 pounds per million Btu on gas-fired utility boilers in California. It has also provided sizeable reductions, typically 80 to 90 percent, on combustion turbines and industrial sources.

We estimate the cost for seasonal reductions on RACT control coal-fired utility boilers and seasonal reductions to .1 pounds, not to .15 pounds at not much more than $1,000 per ton.

An important thing to note is that we are talking about reductions below .15 pounds, which means that using SCR sources would create NOx allowances for sale.

SNCR has been used to provide NOx reductions ranging from 30 percent to over 60 percent on utility boilers and up to 75 percent on industrial sources. In essence, on SCR hybrid systems, we believe that reductions exceeding 90 percent will be possible.

Estimated cost for 30 to 40 percent seasonal reductions on coal-fired utility boilers using SNCR will be below $1,000 per ton.

I'm not here today to suggest that every boiler
should install SCR and SNCR. What we are trying to say is that there are multiple options available and every source will either be able to find an appropriate cost-effective technology or under a cap and trade scheme will be able to buy allowances, and that the average cost under a cap and trade scheme to meet the limits that EPA has proposed will be well below the $1,650 to $1,700 per ton cost proposed by EPA.

Given that there are a lot of suppliers selling advanced NOx control technologies, catalysts and related materials, and that there is significant overcapacity among these suppliers, those needing controls will have no problem obtaining them in time for the 2003 ozone season.

Further, we believe that EPA has overestimated perhaps by a factor of two the need for SCR and SNCR, as sources will use combustion optimization and other low capital cost combustion modifications to lower NOx emissions below the expected baseline.

Finally, a related concern, that installation of NOx controls will disrupt the power supply of the U.S., is unfounded. Because the installation of SCR and SNCR systems doesn't normally require extended outages, most or all of the work requiring boiler shutdowns can be done during plant outages.
Now moving to my second point. We support EPA's suggestion of phasing in compliance with the SIP call limits, whether implicitly by providing a mechanism for rewarding early reductions or explicitly by setting an intermediate NOx reduction target for the 2001 ozone season. A phase-in will provide some payback for those who put on controls early to accommodate outage schedules or for other reasons, will help us capture environmental benefits early for little or no incremental cost, and also give an indication in terms of ozone levels in the 2001 and 2002 seasons that the SIP call targets have been set at an appropriate level.

In any case, EPA should phase in the NOx limits fully by the 2003 ozone season.

I would like to thank you for the opportunity to speak, and I would be happy to answer any questions.

MR. WILSON: Thank you.

Mr. Hamlin.

MR. HAMLIN: My name is Pete Hamlin and I'm chief of the Air Quality Bureau for the Iowa Department of Natural Resources. I'm here today to speak to the impacts of the current rulemaking on Iowa and the four other Northwest states of Minnesota, North Dakota, South Dakota, and Nebraska. These Northwest states are all OTAG states that
are not subject to further controls in this rulemaking as proposed.

The Northwest states support these rules as proposed. We recognize that interstate transport is a problem. However, we must not overstate the issue. The OTAG analysis clearly demonstrated that violations of ozone public health standards are primarily a local problem with primarily local solutions. EPA must assure that the local responsibility remain the primary focus or it will not succeed in correcting the existing violations of public health standards.

The challenge in using a weight of evidence approach is that not all evidence is equal. EPA drew the proper conclusion, that the rulemaking should remain focused on the 22 states identified in this proposal and not be expanded, as some have suggested, unless the 2007 post-implementation review indicates the need.

EPA's decision in this proposal to exclude Iowa and the other Northwest states and the other ten states is the only appropriate decision. All credible current information indicates that these states are not meaningful transport contributors to the existing ozone public health violations.

EPA should resist suggestions to revisit the
status of the 15 states excluded from this proposal. This issue has been discussed in great detail during the OTAG process and it has been the subject of significant data assessment efforts. There is little or no likelihood that credible data can be presented during the time period of this rulemaking that could justify a reassessment of these states.

The appropriate time for formal review of the status of these 15 states is the planned reassessment in 2007. This will allow time to determine the effectiveness of controls in the 22 states having the overwhelming impact on public health and allow time for assessment tools to mature to a point where they are more apt to be able to deal with the smaller impacts than these 15 states might have while also better addressing those additional controls that are more likely needed in the 22 states already identified.

This is supported by a close review of the OTAG modeling, as made quite clear by the UAM-V modeling submitted to OTAG by the Northwest states. This modeling was subject to a thorough review and discussion during OTAG. Any change in the states determined to have significant contributions cannot be justified based on a reasonable review of the available information.

Iowa, together with the other northwestern states,
as appropriate, will continue to analyze the situation, and we intend to have additional analyses available by the end of the comment period.

Both a determination of significant contribution and the setting of initial emission reduction goals should be based solely on the environmental impact of that state. They should not be adjusted for other factors that are not transport related. The appropriate time to address these other issues is during the development of state SIPs.

State budgets should not be adjusted for the NOx waivers. While sympathetic to the dilemma posed, this tradeoff should be a matter or state SIP development rather than a pre-SIP manipulation.

The EPA solicited comments regarding the use of common control technology and cost assumptions in developing state-by-state budgets. This approach is based on the premise that it would result in uniform cost-effectiveness. This assumes that cost-effectiveness for ozone transport is adequately defined by cost per ton removed. This would be valid if the impact per ton of emissions was equal from all sources. This is clearly not correct. Any cost-effectiveness criteria must relate directly to the goal in order to be valid.

The only valid cost-effectiveness criteria would
be one based on cost per microgram of impact. To do otherwise would result in a less effective overall strategy with either a lesser chance of success in eliminating existing violations of public health standards or the unjustifiable imposition of unnecessary, ineffective and inordinately expensive controls on remote sources.

EPA notes the belief that other benefits justify using this SIP call to overregulate emissions. Even if true, this rulemaking is not a valid vehicle for such regulation.

EPA also noted the belief that such overregulation would be more equitable. This is also invalid. Controls should not be required of other sources merely because they are similar to sources where such controls are needed.

Our strategies must remain focused on the problem that we are trying to address: ozone public health violations. If EPA wishes to implement a general nationwide emission reduction program, the rulemaking should be proposed to address that very issue and not pretend to be based on ozone transport assessments.

Thank you.

MR. WILSON: Thank you.

Mr. Herrin.

MR. HERRIN: Good morning. My name is Danny
Herrin. I'm manager of clean air compliance at the Southern Company. My summary statement provides comments and recommendations on the proposed SIP call, and I would like to relate most of my comments to the South.

The proposed SIP call contains several serious legal, technical and practical flaws, inaccuracies and problems. Let me talk about a few of these.

First and foremost, the legal justification for the proposed SIP call is fundamentally flawed, and I will let others later in the day discuss that more.

Further, in issuing a SIP call, EPA has ignored years of serious scientific study and policy debates as well as many key OTAG recommendations and goals. OTAG recommended additional subregional modeling for states to develop and propose appropriate levels and timing of NOx emission controls. EPA has ignored this recommendation.

OTAG also recommended a range of utility and industrial NOx controls with no controls for coarse grid areas such as south Alabama and south Georgia. In issuing a SIP call, EPA has proposed a more stringent control level than even OTAG recommended and without any further analysis.

Significantly, EPA has also ignored one of the most important criteria in OTAG's goal; that is, to select a cost-effective strategy to reduce ozone.
In addition, EPA has ignored significant differences in ozone transport in the southern tier of the OTAG domain versus the northern tier by applying a one-size-fits-all approach. A decade of data confirm that the majority of ozone exceedances in southeastern cities are homegrown, with little impact from long-range transport. An analysis of the scale of influence also suggests that the transport distances in the Southeast are generally near or less than 100 miles.

Further, extensive Southern Company modeling that was presented as part of the OTAG process shows that NOx emission reductions proposed for Alabama and Georgia by both Pennsylvania and the SIP call show that no additional controls are justified for Alabama and Georgia to address transport outside of each of these states.

EPA has also included, against OTAG recommendations, the entire states of Alabama and Georgia. No additional benefits are provided by point source controls in the coarse grid areas of these states.

As EPA said, the administrative burden on these is one of the reasons why we are saying this needs to be done, but that administrative burden at most would be minimal. Our analyses show that just Southern Company sources that are below the fine grid line in the states of Alabama and
Georgia would cost at least $140 million in capital and $6 million in annual operation and maintenance. That's a lot of administrative burden.

Subregional modeling should determine sources to be controlled in Alabama and Georgia, not an arbitrary line or decision. This is another example of ignoring OTAG and conducting no analysis.

Finally, EPA has not evaluated the ability of the named states' industries or equipment suppliers to meet the stringent proposed deadlines for implementing NOx emission controls. With over 230,000 megawatts of utility generation and 1,650 industrial sources affected, no analysis has been performed to assure the equipment can be provided, installed and optimized in the 3-year period. The complexity and logistics of the control projects required to meet the requirements of the SIP call dwarfs the acid rain program, which is being implemented over a 9-year period. Concern is heightened by the fact that no analysis has been conducted to assure that such a stringent deadline will not unduly affect the electrical supply.

In summary, the EPA proposed rules ignore the OTAG science and recommendations relative to transport distances in the Southeast and the lack of benefits of further NOx controls in Alabama and Georgia relative to other ozone
nonattainment areas. EPA has arbitrarily included the entire states of Alabama and Georgia because of unfounded assumptions on additional benefits and because it perceives that there will be an administrative burden on these states. Finally, EPA has, without analysis or good judgment, assumed that the massive control requirements necessary to meet the state budgets are necessary and achievable within the deadlines.

As my aging mother-in-law who used to run a grocery store below the coarse grid line would say, this weight of evidence approach would tend to suggest to you that somebody has a thumb on the scale, and in the case of the Southeast probably both thumbs.

Thank you.

MR. WILSON: Thank you.

MR. SEITZ: For the record, you noted, particularly Alabama in the coarse grid area, the administrative burden. We asked for comment on that. In your submission here today or in your written comments, could you specifically address in that the administrative burden not only to yourself but, to the extent you understand the process within the state of Alabama, what administrative inefficiencies, or the other way to handle it?
MR. HERRIN: Sure.

MR. SEITZ: In addition, you made a lot of references to modeling you've done that also was submitted to OTAG. In your written comments could you ensure that you cross reference that so we know what modeling you are referring to against the database that OTAG has?

MR. HERRIN: We'll definitely do that.

MR. WILSON: Mr. Herrin, I had one question. You can either answer it now or for the record. You and Mr. Wax seem to reach different conclusions vis-a-vis the feasibility of meeting the proposal. I don't know if you want to comment on that now or later.

MR. HERRIN: I think my only comment can be I don't think the analysis has been done. I think we intend to do some of that analysis. To say that there is excess capacity out there has not addressed whether that capacity is sufficient to provide that particular operation to happen.

I think the problem with the whole analysis is that nobody has evaluated these existing sources for retrofit of this technology. We've got many sources that will have difficulty providing this technology, and I think there is evidence to say that won't take a whole lot longer than what people think it will take.
MR. SEITZ: But in light of the differences, for the record your comments will specifically address that issue?

MR. HERRIN: Sure.

MR. HAMLIN: That's correct.

MR. WILSON: It will be useful for both of you and others who have information. This is obviously and important issue.

MR. STOLPMAN: Mr. Wax, you indicate that you think EPA was high on the cost side. Would you be able to provide for the record in particular where you think we went wrong on that? Was there one particular mistake that we made that you believe is in our analysis?

MR. WAX: We'll put that in our written testimony.

MR. WILSON: Thank you all very much for taking the time to come today.

The next panel is Mr. Michael Bradley, Mr. Paul Wallach, and Mr. Gene Trisko.

MR. BRADLEY: Good morning. My name is Michael Bradley, the director of the Ozone Attainment Coalition, members of which include ten electric generating companies in the Northeast as well as environmental advocacy organizations that are state based, national based and regional based.
What I would like to do today is focus on two primary areas. One is the weight of evidence that EPA has used as the basis for the regulatory action, as well as the use of the NOx budget for electric generating facilities to mitigate the regional transport.

The coalition agrees with the proposed SIP call that EPA has put forth. The assessment completed during the ozone process clearly demonstrated the existence of an extensive regional transport problem, identified the role of NOx emissions as the primary contributing pollutant to the transport problem, and identified the availability of cost-effective NOx emission reduction strategies from a variety of sources.

OTAG also applied a sophisticated range of computer analyses looking at air quality data as well as meteorological data.

Taken together, I think these types of analyses made some very important findings.

One is the existence of the widespread regional transport ozone problem.

Second is the existence of a persistent reservoir of elevated ozone throughout the Ohio River Valley area during the summer months, which tends to flow into the Mid-Atlantic and Northeast states as well as to the upper
Midwest and into Canada.

Third, the boundary levels of ozone into the OTC region are often at concentrations of 8 PPB or higher and occasionally they are at or above the 120 1-hour PPB standard.

An historic pattern has been identified as well: Ozone transport ranging from 150 to 450 miles per day during the ozone season.

This information led the OTAG process to the conclusion that a broader range of regional emission reductions would be necessary in conjunction with local controls to allow many current nonattainment areas to achieve attainment.

OTAG also relied on the UAM modeling evaluation strategies to look at a variety of emission control strategies across the OTAG region looking at every sector. Some of the conclusions that are clear from that process is that controlling NOx emissions from elevated point sources is an extremely cost-effective and air quality effective way to go. Aggressive NOx controls across a large portion of the OTAG region along with needed local VOC controls will be needed to achieve both the 1-hour and 8-hour standards.

Among the control recommendations developed by OTAG is the control of large electric generating sources to
levels of 85 percent. Coalition members such as Northeast Utilities, PECO, PSE&G, Atlantic Electric, United Illuminating, and others have demonstrated the ability to reduce emissions at $1,000 per ton or less. These control options include combustion modifications, SNCR, SCR, fuel switching, and others.

I think the point is that a lot of this control activity has been done and there is a lot to gain by looking at the experience in the Northeast and other areas of the country.

With the weight of evidence having established the need for regional NOx controls, the coalition believes that there are several primary elements that are critical to achieving the proposal's regional transport reduction goal:

A firm seasonal NOx cap for the 22 states based on an average NOx emission rate of .15 pound per million Btu in large electric generators is absolutely necessary.

Market based emission trading.

The adoption of all regulatory requirements by the year 2002, with full implementation by May 1, 2003.

Before I go into these issues, I also want to stress the point that the coalition also supports EPA doing its part of the bargain, which is implementing the strategies on non-road area sources and motor vehicles that
will be important to achieve the goal.

The timing of achieving the NOx levels will be key to many areas, especially the Northeast where we are bearing the burden of both the environmental, public health and economic impacts from transport over the course of several decades. The Northeast states have done a reasonable job at instituting Clean Air Act required measures and additional measures.

I think it's important to emphasize that Michael Wax's points on the cost-effectiveness, feasibility and availability of control technologies is something that the coalition is evaluating. We will be submitting a report that looks into that for the record by the end of the comment period.

I want to stress that we and the utilities that we work with believe that the ICAC strategies and assessments are reasonable and can be obtained. We will be submitting written comments on March 9. Thanks.

MR. WILSON: Thank you.

Mr. Wallach.

MR. WALLACH: I want to apologize at the outset. I don't know which of my three sons to blame my voice on, but I'm sure it's one of them. In any event, I'm sure a lot of you lived through the flu also.
My name is Paul Wallach. I'm here today on behalf of the New England Council, which is the nation's oldest regional business organization. It covers, obviously by its name, the six states up in New England. I've served as a member of the council's board of directors for over a dozen years and now serve as chairman of the council's Environment Committee. I'm also a senior partner with the law firm of Hale and Dorr.

The council is going to submit very detailed written comments for the record. These comments today will be much more general.

By way of background, the council is made up of the region's leading manufacturers, financial and academic institutions, public utilities, high technology firms, and a variety of other businesses.

The mission of the council is to promote public policies, regulatory and legislative initiatives that enhance the business climate in the region. It is through the council's 35-member congressional delegation that the council effectively advances the interests of the region and safeguards its economy. The council has offices both in Boston and on Capitol Hill.

I would like to begin by stating that the members of the council and the region as a whole have a demonstrated
commitment to protection of the environment and public health and safety. Our 6-state region has worked actively with EPA and the various state environmental agencies to ensure that industry is an equal partner with government and citizens to improve air quality.

In many instances -- I think EPA is well aware of this -- New England companies have gone far beyond the requirements of the Clean Air Act programs, installing an array of voluntary measures and expediting Clean Air Act compliance schedules.

It is not only this attitude towards the environment that makes New England unique, but also its location. Two years of study by OTAG and others have confirmed that air pollutants emitted in one state can and are transported into another. It is now known that emissions from midwestern and southeastern states directly contribute to the ozone levels in the Northeast.

The resulting problem is twofold.

The first and most important is dirtier, less healthy air for a region that has great pride in its environment.

The second is that it puts New England in a situation where it is out of attainment with federal standards and in fact is unable to achieve those standards.
This, of course, has serious implications for New England and its citizens and also unfairly results in sanctions and even tighter emission control requirements.

New England has made great progress in addressing emission sources in its six states. The council believes that it is now time that upwind states be forced to aggressively address the sources of the air pollutants that are transported into our region.

EPA is legally mandated to see that such actions are taken. In addition to being an important health and environmental issue, the costly regulations that are required because New England will not be able to meet federal standards make this a fairness and a competitiveness issue.

The council generally supports the approach contained in the proposed rule published by EPA last November. The only way in which New England and other downwind areas of the country can reach attainment goals is by requiring significant emission reductions in a timely fashion from the Midwest and South.

New England businesses and consumers have spent several billion dollars to address their own emissions. We do not, unfortunately, control the practices in other parts of the country. Only EPA action to require substantial
emission reductions by the states in these upwind areas will adequately address the problem of transported pollution.

Because of its critical importance to the region, the issue of transported pollution has moved to the very top of the council's agenda. It has been the subject of consistent attention by a major working group of council members.

Members of that working group have met with state environmental officials across the region, executives of major chambers of commerce, and members of the New England congressional delegation. We will be having a briefing with the members of the congressional delegation on February 11, and we hope that this will help them understand the importance of this issue to the region.

Although we generally support EPA's proposal, which clearly assigns responsibility more fairly, we do have concerns about the timing for achieving the emission reductions.

To ensure clean air and to mitigate the competitive unfairness for New England, relief from the problem is needed as quickly as possible, if not now. Today there is no doubt that emissions from upwind regions cause significant problems with air quality downwind. Thus we urge EPA to immediately require more significant emission
reductions at the source.

To mitigate the impact on air quality and ensure that the needed reductions from the Midwest and South are made on time for the Northeast to meet upcoming compliance deadlines, eight northeastern states have, as you mentioned, Mr. Wilson, petitioned EPA, seeking to require emission reductions from hundreds of industrial sources in the Midwest and South. Those emissions adversely affect air quality in New England.

We recognize -- I want to emphasize this -- that sources in New England also are going to have to take steps to achieve the objectives in this proposal. Additional control requirements for New England, however, must be required on the same schedule set for the Midwest and the South. It makes no sense to impose economic and environmental sanctions and bump up provisions for failure to demonstrate attainment in New England until significant emission reductions are achieved in upwind areas.

In conclusion, although long overdue, we are pleased that EPA is moving forward now to address the serious consequences of transport of ozone precursors, and we hope that you will stay on an aggressive schedule to do that. We look forward to working with you on that.

MR. WILSON: Thank you.
Mr. Trisko.

MR. TRISKO: Thank you, Mr. Wilson.

Good morning. My name is Eugene M. Trisko. I'm an attorney admitted in the District of Columbia. I'm here today on behalf of the United Mine Workers of America, AFL-CIO.

The UMWA represents organized coal miners in coal producing regions throughout the United States. UMWA participated in the Ozone Transport Assessment Group process and in proceedings before the OTC respecting the stationary source memorandum of understanding negotiated among northeastern states in September of 1994.

The UMWA's involvement in these matters stems from its interest in mitigating potential adverse employment impacts on American coal miners arising from unduly stringent NOx control limitations for coal-fired plants. Thousands of UMWA members have lost their jobs as a result of fuel switching for compliance with the acid rain control program under Title IV of the Clean Air Act. We were actively involved in the acid rain debate in the 1980s and put forward a number of constructive proposals before EPA and Congress designed to reduce acid deposition while protecting our members' jobs.

Our interests here today are the same. We are
very aware of the risk of additional job losses resulting
from new utility NOx control requirements exceeding those
required by Title I and Title IV of the 1990 Clean Air Act
Amendments. The UMWA supports cost-effective reductions of
ozone precursor emissions from power plants and other
sources that will produce public health benefits without
sacrificing its members' jobs. We support the phased
approach to emission reductions that will be advanced here
today by the Alliance for Constructive Air Policy calling
for an initial 55 percent reduction of utility NOx emissions
similar to Phase II of the Ozone Transport Commission's MOU.
EPA's proposed limits on coal-fired power plant
emissions based on a uniform rate limit of 0.15 pounds of
NOx per million Btu should be revised substantially. EPA
should give states adequate time to complete the subregional
modeling called for by OTAG. States also must have the
discretion OTAG recommended in setting new emission
limitations for power plants within a range of Title IV
controls and an 85 percent reduction.
States in the Midwest and the South should have
the same benefit that states in the Northeast have had
through regional ozone transport commissions to resolve
their regional concerns about ozone transport. We strongly
encourage states in these regions to take collective action
in response to this rulemaking. Working together, states need to devise truly cost-effective approaches to emission controls and to complete the necessary modeling to determine the appropriate allocation of emission reductions across all source categories.

EPA here is imposing an impossible burden of proof on states to disprove the magnitude of their alleged contribution to ozone problems in other states without providing states sufficient time even to complete the modeling explicitly recommended by OTAG. This said, it is clear from OTAG's modeling that no conceivable level of emission reduction from coal-fired power plants or other sources in upwind areas would allow the most serious ozone nonattainment areas to demonstrate attainment with the 1-hour ozone standard.

We have the following additional concerns about EPA's proposal:

1. Inadequate bases for significance determinations. Neither OTAG nor EPA modeling has identified the impact of emissions from particular upwind states on downwind states' ability to attain or to maintain the 1-hour ozone standard. This is a critical omission, precluding the agency from making a legal determination of the significance of ozone transport affecting any downwind
area.

We note, for example, a typical ozone impact of 2 to 6 parts per billion or less for controllable emissions from large multistate OTAG subregions in the serious and severe urban areas of primary concern to OTAG. OTAG's roll-out modeling showed that 75 to 90 percent of downwind ambient air benefits occur within 100 to 250 miles of the areas subject to controls. In short, OTAG found that regional controls mainly yield regional benefit.

2. This size doesn't fit all. OTAG modeling likewise demonstrated that ozone transport is relatively more prevalent in the Midwest and Northeast, especially around the Great Lakes region and within the Amtrak corridor, than in the Southeast or Southwest.

3. Need for a 2-phase approach. EPA should also look to the example of the OTC MOU for the timing of its proposal. The 1994 MOU set a Phase II date of 1999 for a post-RACT reduction of 55 to 65 percent for plants in the Northeast.

4. Technological Infeasibility. These are summarized in my statement.

5. Unattainable Deadline.

6. A lack of cost-effectiveness.

The statement that we have submitted contains more
detailed remarks.

Thank you very much.

MR. WILSON: We'll put the whole statement in the record. Thank you very much.

MR. SEITZ: A couple clarifications. Mr. Bradley, you said all three of you are supporting a phased approach. I don't know if all of you agree on this. I suspect not as far as the numbers. Would you repeat what your phased approach was?

MR. BRADLEY: We are supporting the design of a cap and trade program that promotes incentives for early reductions. We are not supporting the phased control approach per se. We want the controls in place by May 1, 2003. We want all the regulations adopted by September 2002.

MR. SEITZ: Fully by 2003? Adoption by 2002?

MR. BRADLEY: Implementation complete and compliance achieved by May 1, 2003.

MR. SEITZ: Thank you.

Mr. Trisko, in essence, what I thought I heard you say is "we'll stick with the NOx MOU in the Northeast and we'll go into a bigger process to examine the other regions" and you were encouraging states to get together.

MR. TRISKO: No, Mr. Seitz. Our detailed
statement explains that. Our concept is very similar to what the Commonwealth of Pennsylvania proposed in its section 126 petition, that the fair share that Pennsylvania is committed to, Phase II of the NOx MOU, which in the western portion of Pennsylvania and New York is a 55 percent reduction, apply to the northern portion of the fine grid region, and that subsequent to the imposition of those controls that a determination would be made respecting any follow-on controls, and that necessarily would include consideration of emission reductions for more than just the utility sector.

MR. SEITZ: But that is consistent with the NOx MOU, as I recall, in the Northeast.

MR. TRISKO: Because the NOx MOU itself provides for a 2-phase program.

MR. SEITZ: Thank you.

MR. STOLPMAN: Gene, you indicated, I think, that you are projecting job losses from this proposal greater than the combination of Title I and Title IV. Will you be submitting that for the record?

MR. TRISKO: No, Paul. The statement was to the effect that the UMWA has lost thousands of jobs as a consequence of fuel switching under the SO2 control provisions of Title IV. We are concerned that if the
electric utility industry in the context of the current atmosphere of restructuring is subjected to a multibillion dollar per year capital investment requirement for SCR controls that a large number of older and smaller plants will simply be taken off line rather than retrofitted with SCR or other controls.

Mr. Wilson: Thank you all very much for taking the time to come here today.

The next panel is Mr. James Seif, Mr. Lenny Dupuis, and Mr. John Daniel.

Mr. Seif: Good morning. I'm Jim Seif, secretary of Pennsylvania's Department of Environmental Protection. We appreciate this opportunity. We will be submitting additional material later. Permit me this morning to describe the two issues that have really drawn us here today.

First, it is clear that nitrogen oxide controls in states outside the ozone transport region are necessary. This need was convincingly documented during the past three years when the Pittsburgh area violated the National Ambient Air Quality Standards. Ozone concentrations at our Ohio/West Virginia border measured ozone coming into our state at levels up to 94 percent of the 1-hour standard and exceeding the new 8-hour standard.
Clearly, Pennsylvania cannot protect the health of its citizens without substantial reductions of the pollution coming into our state. We want all states responsible for and impacted by air pollution -- and Pennsylvania is in both those categories -- to do their fair share to address this issue.

Second, we are issuing an invitation -- maybe a challenge -- to our neighboring states to develop and implement a market-based cap and trade program to regulate nitrogen oxide emissions. This program should reduce emissions by at least 55 percent by 1999 and make further ones by 2003 as they may be necessary.

As to the fair share issue, I think the last eight years have seen significant improvement in our scientific understanding of the formation, transport and effect of ground-level ozone. The Clean Air Act of 1990 set up the Ozone Transport Commission, which has dealt very successfully with the issue over the years. It also commissioned the National Academy of Sciences study, and as a result of these and other actions it has become fairly clear that ozone's impact on the Northeast cannot be addressed without the help of others. Recently, the OTAG group, very ably chaired by Mary Gade of Illinois, added to that series of arguments.
The work of these groups made clear what was intuitively obvious. It told us which way the wind blows and proved that nitrogen oxides do play a major role in the formation and transport of ozone.

We have continued to work on this problem on our own and with OTC. Since 1994 we have achieved over 200,000 tons per year of reductions from sources, mostly utilities, which emit nitrogen oxides through implementation of the RACT Phase I program under the Clean Air Act.

We also adopted NOx Phase II rules, consistent with OTC recommendations. These rules require reductions of 55 to 65 percent of NOx emissions from 1990 levels through a market-based cap and trade program.

I'm going to urge EPA to deal with an important and related issue here and in the future. It has to do with the Federal Energy Regulatory Commission open access rule. We adopted that approach in Pennsylvania in legislation and with a recent landmark ruling in our utility commission, and we are plunging ahead. We are going to a market-based approach to providing utility services, and we propose to regulate emissions that way as well.

That leads me to the challenge that I have in mind. In 1995, and once again when we filed our 126 petition with our seven sister states, Governor Ridge called
for a uniform market-based nitrogen oxides cap and trade program for the Midwest and South consistent with the one already in place in our state. We chaired the working group at OTAG on this subject and advocated that approach, and we are very pleased that EPA has now recognized its merits and is developing a supplemental rulemaking model cap and trade program. We urge our fellow states to consider it carefully.

We are also pleased to hear that United Mine Workers of America and mine owners with whom we met recently in our state are supporting this approach.

Today I would like to challenge all the utilities and all the states listed in the 110 SIP call to level the playing field by making the reductions required by the Pennsylvania program and the OTC cap and trade NOx MOU. I challenge all the states in the region, that is, those to our south and west, to begin now to develop a program, not because it is required, but because it is the right thing to do to protect the public health in an economically efficient way.

I might note that the cap and trade program and other provisions will help reduce nutrient loading in the Chesapeake Bay as well. There are many water bodies, including the bay, that take as much as 40 percent of their
nutrients from air deposition.

We will work with all utilities and all states, all our colleagues in all other states, and certainly with EPA in these regards.

I would like to close by emphasizing the upstream/upwind analogy. The fact of the matter is that it's not just a pleasant metaphor. It is the very basis of how the environment works and how regulation should work as well.

MR. WILSON: Thank you.

Mr. Dupuis.

MR. DUPUIS: Thank you and good morning. I am Lenny Dupuis with the Environmental Policy and Compliance Department at Virginia Power. Virginia Power is an investor owned electric utility serving about two million customers, with power generation facilities located primarily in Virginia but also in West Virginia and North Carolina.

We have many serious concerns about EPA's SIP call, a few of which I will address with you all this morning.

It was our understanding that EPA was to base its SIP call on the recommendations made by OTAG. However, EPA's proposal is inconsistent with the OTAG recommendations in a number of respects.
The uniform level of very stringent controls EPA has assumed for large stationary sources in calculating its proposed budgets is not justified. OTAG modeling clearly indicated that a one-size-fits-all strategy is not appropriate and that ozone benefits resulting from NOx reductions diminish with distance. Accordingly, OTAG recommended a range of controls and that the states be allowed up to 12 months to perform additional subregional modeling.

EPA had undermined the states' ability to perform this modeling by establishing a comment period that falls well short of OTAG's 12-month recommendation. There is no statutory requirement or court order requiring EPA to issue a final rule by September. EPA should allow the states the time they need to perform this modeling.

Subregional modeling will be very important to Virginia. Point sources account for only 25 percent of the total manmade NOx emissions and only 13 percent of the total ozone precursor emissions in the State of Virginia.

Furthermore, the magnitude and density of emissions in the southern two-thirds of our state are considerably less than those in the northern counties of the state.

EPA's narrow focus on NOx reductions from large
point sources, while ignoring other important source sectors in the calculation of its NOx budgets, is misdirected. Additional subregional modeling is needed to determine what sources, including mobile and area sources, are impacting downwind nonattainment areas and what levels of control are needed to address these impacts.

We believe that states cooperating on a subregional basis to address transport-related issues is more appropriate than a broad-based regional strategy. Clearly this was the intent of Congress when it established the OTC. The Northeast states were afforded the opportunity for subregional state collaboration on transport issues, and this same opportunity should be extended to regions outside of the OTR.

We question EPA's timing of this SIP call. EPA's recent listing of areas that have achieved the 1-hour standard is testament to the fact that air quality is improving. With additional emission reductions and air quality benefits yet to be achieved from Phase II of the Title IV program, it is premature for EPA to justify its SIP call on the basis of the new 8-hour standard before it has even designated any nonattainment areas under this standard.

EPA's grouping of states to demonstrate SIP inadequacies is inconsistent with the Clean Air Act, and its
attempted linkage of zero-out modeling analyses with state total NOx emissions to estimate state-by-state culpability is overly simplistic and ignores the complex relationships between precursor emissions and ozone formation, which, by the way, include VOCs as well as NOx.

EPA has not even demonstrated what air quality benefits will be achieved from its proposed strategy or whether such reductions will lead to attainment of the ozone standard in nonattainment areas, and EPA has yet to define specifically what level of ambient impact constitutes a significant impact. Instead, it has focused on technology and the alleged ease of applying controls rather than on air quality benefits in areas of concern.

EPA's determination of cost-effectiveness based on dollars per ton of NOx reduced inappropriately assumes that a ton of NOx emitted anywhere has the equivalent air quality impacts everywhere. Cost-effectiveness must be tied directly to air quality impacts and benefits.

While we conceptually agree with EPA that a trading program would reduce costs, we are concerned whether enough excess tons will be generated to provide a robust trading program given the steep levels of controls proposed in this ruling.

Another issue of concern is whether the required
equipment installations can be achieved by the year 2002 and
whether the required technology can be installed without
serious disruptions to the electricity supply in the eastern
United States. A phased approach toward implementation over
a more sensible time period will be more feasible.

Virginia Power believes that the states, working
together in a subregional framework, would more effectively
address air quality needs and economic concerns while
assuring continued progress toward regional air quality
goals in the eastern United States. For this reason,
Virginia Power has joined with the Alliance for Constructive
Air Policy to promote a workable, more common sense
subregional approach to achieving air quality goals. We
also support many of the views that will be expressed by the
Virginia DEQ, the West Virginia DEP, the Utility Air
Regulatory Group, and the Midwest Ozone Group.

We thank you for this opportunity to present our
views. We will be filing additional written comments on
these issues before the close of the comment period.

MR. WILSON: Thank you.

Mr. Daniel.

MR. DANIEL: Thank you. My name is John M.
Daniel, Jr., director of technical support for the
Department of Environmental Quality in the Commonwealth of
Virginia. I am pleased to have the opportunity to make these comments.

It is our opinion that these SIP calls are improper or inconsistent with the Clean Air Act because EPA has not done the detailed state-by-state culpability analysis envisioned by sections 110(a)(2)(D)(i)(1) and 110(k)(5).

In addition, EPA has misinterpreted the results of the OTAG analysis, which showed very clearly that while NOx reductions reduced ozone levels, the biggest benefit occurred in those areas where the NOx reductions occurred and decreased rapidly with distance.

In addition, EPA has ignored the OTAG recommendation that more detailed subregional modeling analysis be performed before SIP calls were issued. The OTAG modeling also showed that the massive NOx reductions proposed by EPA would not achieve attainment and maintenance of the 1-hour ozone standard in the serious and above nonattainment areas that EPA was trying to help.

It is ironic that this SIP call to 22 mostly southern and midwestern states suggest that massive NOx reductions even from attainment areas will minimize transport and help the Northeast achieve the ozone standard.

At the same time, EPA was defending their action
in litigation from New York, Pennsylvania and Vermont and
granting NOx waivers to four upwind states, Illinois,
Indiana, Michigan, and Wisconsin, because modeling evidence
showed that additional NOx emission reductions would not
contribute to attainment of the ozone air quality standards.
The U.S. Court of Appeals for the Seventh Circuit recently
sided with EPA on this lawsuit.

What EPA has proposed is essentially a
one-size-fits-all concept that is technically indefensible.
It is clear that a ton of NOx in Virginia or Alabama or
Georgia is not equivalent to a ton of NOx in the Northeast
in terms of benefit. To suggest that it is flies in the
face of common sense.

In addition, EPA has provided no documentation
whatsoever that these reductions will demonstrate attainment
of the 1-hour standard in any area of the country. If EPA
truly believes that these NOx reductions are necessary, then
it should go to Congress and get Title IV amended to require
them. It is outrageous to place this burden on states and
point sources without being able to show the ambient benefit
to ozone levels. If EPA wants to equate this to the SO2
acid rain program, then a Title IV amendment is the
appropriate way to accomplish it.

Absent nonattainment problems in the South and the
Midwest, EPA should withdraw this SIP call until states have
the opportunity to evaluate their status with the new 8-hour
standard. States that identify problems with the 8-hour
standard should then have the opportunity to perform
appropriate modeling to determine what reductions are
necessary, whether low level or high level NOx reductions
provide more benefit, or whether more VOC controls are
appropriate.

Historically, EPA has allowed states the full
three years to develop SIPs for new standards, and EPA
should not arbitrarily select one year for states to deal
with a problem that will be as difficult as this one. State
procedures for any needed regulation development simply
cannot be accomplished in such a short period of time.

Absent a clear documented need for these
reductions and a clearly demonstrated benefit, imposition of
such controls on utility and industrial boilers is clearly
arbitrary and capricious and therefore inconsistent with the
Clean Air Act.

Earlier we wrote to EPA and requested an extension
of the comment period due to the inability of states and
point sources to retrieve the detailed emission inventory
that EPA is using as a basis for this SIP call. We
reiterate that extension request here.
Thank you for the opportunity to present our views. More detailed written comments will be submitted before the end of the comment period.

MR. WILSON: Thank you very much.

MR. SEITZ: Just one comment. Are you suggesting that the statutory test for this SIP call is attainment in those areas that are being addressed?

MR. DANIEL: I'm not a lawyer, John.

MR. SEITZ: That's what your comment said. Would you ask your legal department to say how under this section of the law attainment is the test?

MR. DANIEL: Sure. Be glad to.

MR. SEITZ: Because we believe in the introductory paragraph we are talking about transport, not attainment.

MR. DANIEL: I'll be glad to get them to do that.

MR. HOFFMAN: Mr. Daniel, you indicated that the time period that we have set up in the proposal for states to go through their regulatory process isn't long enough. Could you address what an appropriate time period would be and what the regulatory process would be in your written comments?

MR. DANIEL: From the time we get permission to go forward to develop a regulation it takes a minimum of one year if you are lucky and don't have any road blocks along
the way, but the state administrative procedures drag it out at least 18 months in most cases. There are instances where it has been even longer than that.

MR. WILSON: I have a question for the whole panel, but particularly for Mr. Seif and Mr. Daniel. The whole OTAG process started to help states meet 1999 attainment dates for the 1-hour ozone standard, and yet you all seem to be suggesting various levels of do more modeling, take your time, make sure we've got everything right before we move ahead. How do you see fitting that with the need for states to meet the Clean Air Act mandates for 1999 attainment?

MR. DANIEL: We are in the process of putting together our final SIP package for the 1999 attainment date, and that will be submitted in April.

MR. WILSON: So you are not depending on any reductions from this program to show attainment?

MR. DANIEL: We think we will be able to show it without that at this point.

MR. SEIF: I don't believe I did request the kind of slower approach and more review that you mentioned. That is always desirable, but we want to attain the standard, whatever, sooner than later. We suggest that finalizing the SIP call and getting a cap and trade program in place would
be great first steps.

MR. WILSON: Maybe I remember wrong. I thought you were sort of the OTC 55 percent, which I think we feel is roughly what the acid rain Title IV program already is in the process of requiring, and then more if necessary. Would you expect this rulemaking to make the determination as to whether more is necessary?

MR. SEIF: It would be helpful if some resolution in that regard came. Whether from this rulemaking or a general agreement among states or other kinds of devices, we would love to be instrumental in bringing people together outside the government context as need be to try to make some of those kinds of determinations.

MR. SEITZ: Just one final one to Mr. Dupuis. You made the comment about timing and installation as a concern. You heard the first panel. So in your written comments we would really like you to focus in on the data and the basis for that statement in light of the discussion on panel one. Thank you.

MR. WILSON: Thank you all for taking the time to come today.

The next panel is Mr. David Parks, Mr. Gary Rice, and Mr. Robert Bessette.

MR. PARKS: Good morning. I'm David Parks,
speaking on behalf of the Baltimore Gas and Electric Company (BGE). I will comment today on two main issues.

Number one, OTAG's recommendations and the inconsistencies in the EPA's proposal.

Number two, the effects of EPA's SIP call on Maryland's utility NOx budget.

On the first issue, BGE was an active participant throughout the entire OTAG process, worked closely with the Maryland Department of the Environment, and is in general agreement with OTAG's recommendations. BGE believes that the EPA's proposed SIP call contains numerous inconsistencies with the recommendation of the 37 OTAG states.

For utility NOx controls, the OTAG policy group recommended a range of controls between Clean Air Act controls and the less stringent of an 85 percent reduction from the 1990 rate of 0.15 pounds per million Btu in order to assist states in complying with the existing 1-hour ozone standard. OTAG modeling showed that ozone transport is greater in the northern tier than in the southern tier.

EPA has proposed that the emission rate of 0.15 pounds per million Btu be applied to utility boilers throughout the affected 22 states and the District of Columbia. This is more stringent than OTAG's most stringent
level and totally ignores OTAG's recommendation of a range of controls. Additionally, the EPA's proposed one-size-fits-all rate ignores the OTAG acknowledgment that transport differs in different areas of the country.

Additional modeling and air quality analysis. OTAG recommended that states must have the opportunity to conduct additional local and subregional modeling and air quality analysis as well as develop and propose appropriate levels and timing of controls and have 12 months to complete that modeling before EPA action.

The EPA has not followed this recommendation and has not allowed adequate time in its SIP call to perform any of this important follow-on analysis to OTAG.

On OTAG's technical analysis, quoting from OTAG's executive report, "OTAG has performed the most comprehensive technical analysis of ozone transport ever conducted. OTAG has developed and produced the best and most complete emissions inventory for the OTAG region. OTAG has used UAM-V, a state-of-the-art photochemical model, to analyze the potential impact of various control strategies."

The unprecedented OTAG process brought together states, industry, and the environmental community to produce the results described above. This technical analysis was conducted in cooperation with, and under the scrutiny of,
the EPA. Throughout the 2-year OTAG process the decisions of 37 state environmental commissioners, including final recommendations, were based on this technical analysis. I believe states expected to see a SIP call based on OTAG numbers, OTAG results, and OTAG recommendations. I know Maryland did.

The EPA, in developing its proposal for the SIP call, changed the baseline year used by OTAG, used a different emissions inventory, employed a different computer model, and performed an analysis based on the 8-hour ozone standard instead of the existing 1-hour standard.

In summary, the EPA chose to ignore the advice and recommendations of OTAG, a national work group it established with the Environmental Council of States.

On the second issue, we need to see how these inconsistencies in the SIP call affect the State of Maryland. OTAG's calculation for a utility NOx reduction of the less stringent of 85 percent or an emissions rate of 0.15 pounds per million Btu provided Maryland with a 2007 ozone season budget of 20,195 NOx tons. EPA's SIP call calculation for the same budget period leaves Maryland with only 11,364 NOx tons. This is 44 percent less than OTAG calculated. On January 9 the EPA revised Maryland's budget to 12,971 tons, which is still 36 percent less than OTAG
calculated.

Comparing Maryland's budget in the EPA SIP call to Maryland's budget in Phases II and III of the OTC MOU reveals additional disparities.

In Phase II of the MOU Maryland received 22,881 tons of NOx allowances. In Phase III of the MOU, which, with reductions elsewhere, was anticipated to bring the Northeast states into attainment with the 1-hour standard, Maryland is to receive 15,523 tons of utility NOx allowances.

Let's compare the EPA's SIP call budget of 12,971 tons to the OTC Phase III budget of 15,523 tons. To address only transported ozone, the EPA is proposing that Maryland utilities reduce emissions 25 percent more than they had planned to reduce under Phase III of the MOU to attain the 1-hour standard. Since transported ozone is only part of the total problem, EPA's SIP call proposal for Maryland is illogical and philosophically incorrect. BGE urges the EPA to rectify these inconsistencies specific to Maryland and the inconsistencies with OTAG's recommendations.

We also support a proposal to be presented later by the Alliance for Constructive Air Policy. We appreciate the opportunity to comment on this major proposal.

MR. WILSON: Thank you very much.
Mr. Rice.

MR. RICE: Good morning. I'm Gary Rice. I'm speaking on behalf of Duke Energy, particularly with regard to our electric utility system in North Carolina and South Carolina.

"Start with the end in mind" is a wise adage and it's apparently one that EPA has truly taken to heart in this matter. EPA started with the end in mind of reducing utility NOx emissions in the eastern United States. Its vehicle is this proposed SIP call that we discuss today. But there are only two problems with EPA's approach: it's illegal and it's devoid of any technical merit.

EPA has totally ignored every provision in the Clean Air Act that Congress intended be used to address regional transport of pollutants. Apparently proceeding under sections 176(a) and 184 takes too long. So EPA decided to proceed under section 110, but section 110 requires a state-by-state demonstration of significant contribution, which EPA cannot show.

So EPA decided to ignore that provision of the Clean Air Act as well, and it simply lumped 23 separate political jurisdictions together in an attempt to support its position that each utility NOx source in all 23 jurisdictions contributes equally and significantly to ozone
nonattainment.

This proposal is supposed to be based on state SIPs that EPA considers inadequate for the 1-hour ozone standard, but EPA knows that there are very few 1-hour nonattainment areas in the eastern U.S. In fact, there are no 1-hour ozone nonattainment areas in North or South Carolina. EPA recently revoked the 1-hour standard for both states.

So EPA attempts to bolster its position by including projected 8-hour nonattainment areas. But how can EPA tell states that their SIPs are deficient for failing to address the 8-hour standard when under EPA's own implementation schedule states are not even required to submit 8-hour SIP revisions until 2003?

For that matter, EPA hasn't even identified the 8-hour nonattainment areas and doesn't even intend to until the year 2000. Under EPA's scheme, states will be required to revise their SIPs for yet to be identified 8-hour nonattainment areas in other states all before they are required to complete SIP revisions for 8-hour nonattainment areas in their own states.

But EPA has found it can do a lot when it starts with the end in mind. For example, EPA can propose a SIP call when it hasn't even done the necessary modeling. EPA
can issue a proposal and at the same time admit that the
proposal is incomplete and will be supplemented after the
close of the comment period on this proposal.

As an example, EPA has performed no modeling to
determine which 1-hour nonattainment areas will benefit from
the emission reductions proposed for North or South
Carolina. If EPA had bothered to perform this modeling, it
would have revealed how unnecessary and how unjustified the
proposed reduction requirements are for the Carolinas.

And like the glass slipper in Cinderella, one size
does not fit all. OTAG taught us this. OTAG clearly
demonstrated that by far the great proportion of ozone
reductions in any nonattainment area come from emission
reductions in and near that nonattainment area. But EPA's
proposal is arbitrary because it imposes uniform controls
with no relationship to benefits. North and South Carolina
are prime examples of two states that have no measurable
impact on current 1-hour nonattainment areas but are still
being unfairly and unnecessarily targeted by EPA's proposal.

Likewise, EPA's concept of cost-effectiveness is
capricious; it's missing the mark completely.
Cost-effectiveness must be based on the cost of air quality
improvement, not simply the cost of reductions.

When it's all said and done, EPA's proposal does
not even begin to get the existing 1-hour nonattainment areas into attainment, but that apparently is not EPA's goal.

EPA's proposal is incomplete and illegal and should be withdrawn until a complete, technically sound and legal proposal can be issued. At a minimum, the comment period should be extended at least 120 days after the entire proposal is published, including the supplemental rulemaking.

Thank you.

MR. WILSON: Thank you.

Mr. Bessette.

MR. BESSETTE: I'm Bob Bessette. I am president of the Council of Industrial Boiler Owners, representing industrial companies, architect-engineers, equipment manufacturers, and utility affiliates.

I have a hard time saying this, but I wholeheartedly agree with what Danny Herrin said this morning. Those of you who were involved in the OTAG process, which was very, very good, can understand where that might come from.

[Overhead]

MR. BESSETTE: The proposed NOx SIP call is for ozone transport, not a state and national air quality
standard. If we are considering ozone transport only, OTAG is probably the foundation upon which the best information was generated. It's the most comprehensive study ever. EPA indicated it would take this stuff into account in the overall process of generating the SIP information.

CIBO has supported the OTAG process. We worked very hard with it to come to consensus opinion on what could be done for industries, what could be done for utilities to mitigate ozone impact on all nonattainment areas. A lot of our companies still consider the concessions that we gave or the concessions that we arrived at were sort of non-justified.

Ozone or NOx emissions from non-utility boilers is usually limited to less than 150 miles. In many cases, we can show by actual analysis numbers it's less than 100 miles.

In the process of generating the ozone concessions industrials were looked at on a case-by-case basis. Beyond the utilities, one size does not fit all. We have size boilers that range far in excess of anything that the utilities have; different fuels, different sizes, different operating characteristics. One size does not fit all. Yet we conceded for the ozone budget process that they take one number. So the NOx SIP call was based on one number for
expediency so you didn't have to run hundreds of thousands of different NOx numbers to come up with a budget that EPA would use based on the fact that we use detailed modeling at a later time to determine what the long-range transport was. Some of the things that we agreed to were weight of evidence on coming up with a case by case or coming up with the final NOx SIP call, looking at a basis that said industrials would pay the same as utilities as far as what the actual end results would be.

BACT and RACT units were already permitted the lowest numbers and in many cases were the least emission units in the country today.

And there would be no controls for small units, less than 100 million Btu per hour.

The NOx budget was not a cap or an allocation at that point in time. We believe that and consider that to be the case.

Controls should be applied only in the fine grid area. In cases where states are segregated or separated, the fine grid and coarse grid should be separated as well.

Non-utility point sources contribute very, very little to long-range transport. Stack height is extremely important with regard to what actually happens. It's important that this be given fair consideration.
Any budget agreed to by the states should reflect or be responsive to the actual transported emissions. That means fine grid; that means fine scale. In some cases individual plant modeling is necessary for a state to come up with what their true budget should be.

States need more time to do this. They need time to confirm the inventories on the industrial basis; they need time to complete the additional modeling that is going to be needed if a true budget is going to be decided; and they need time to assess potential disbenefits and assure long-range transport.

Everybody understood in OTAG that the UAM-V model was a good model, that it gave us qualitative data, not quantitative data, and it was not to be used for setting a standard. EPA has done that.

States must be allowed to determine their own long-range transport, and it's going to take time to do that.

Thanks.

MR. WILSON: Thank you. Thank you all very much for coming. We appreciate it.

The next group is Mr. John Johnston, Mr. Jim Murphy, and Mr. Stephen Roberts.

MR. WILSON: Mr. Johnston, good morning.
MR. JOHNSTON: Good morning. My name is John Johnston. I'm chief of the West Virginia Office of Air Quality. I appreciate the opportunity to highlight our concerns and plan to file more extensive written comments.

I am pleased to report that West Virginia is in attainment for ozone. Achieving attainment has not been easy. West Virginia has worked with local industry and has taken the measures necessary to come into compliance with the ozone standard. West Virginia implemented reasonably available control measures to control VOC emissions from both listed and major sources.

Furthermore, as part of the ozone maintenance plan, West Virginia achieved early emission reductions in NOx and VOC and demonstrated these emissions would continue to decline over a 10-year period. Despite this fact, our state is being asked to take the largest comparative decrease in NOx emissions.

Perhaps it is because we have achieved attainment that our agency takes strong exception to the SIP call as proposed. We are particularly concerned that the proposal ignores the Ozone Transport Assessment Group's recommendations and proposes a one-size-fits-all approach to the control of NOx. Even though West Virginia voted no on the overall OTAG recommendation package, our agency is not
opposed to pollution controls.

The OTAG recommendations were the result of two years of science-based effort. To ignore those recommendations discounts two years of intensive work directed toward a rational approach to NOx control. For example, OTAG recommended a level of utility NOx controls ranging from zero percent above Clean Air Act requirements to 85 percent. The SIP call proposal ignored this recommended range and instead went directly to the 85 percent level.

OTAG conducted large-scale modeling and recommended additional time to conduct smaller, more refined modeling to address specific problems. The SIP call proposal ignored these findings and set a time limit that effectively prevents our performance of the additional analytical work required to make sound regulatory choices that have meaningful environmental impact.

The SIP call proposal ignores the impacts of the Small Business Regulatory Enforcement Fairness Act of 1996. SBREFA requires an economic analysis of the impact and consideration of various alternatives on small business. The SIP call revision called for in this proposal will require our agency to file several new rules.

Enacting a rule in West Virginia requires an
agency to determine the economic impact of the rule on the state and requires an estimate of the cost to the regulated community and for the agency to administer the rule. EPA, by not conducting the SBREFA analysis, has shifted the entire burden of analysis to a state agency without providing even minimal guidelines of the cost impact to small business.

The SIP call proposal is a historical precedent under the Clean Air Act in that, to the best of our staff's knowledge, it is the first SIP call to ever involve mitigation of nonattainment rather than, as called for under the Clean Air Act, demonstration of attainment and maintenance of the NAAQS. Until the 1990 amendments, EPA could only issue a SIP call for the purpose of requiring a state to demonstrate attainment and maintenance of the NAAQS in nonattainment areas. Even the 1990 amendments used the word "mitigation" in the context of section 176A and 184 to refer only to those states in a specified ozone transport region. West Virginia is not in an ozone transport region, and EPA's SIP call does not result from the section 176A or 184 processes. We therefore are concerned that the SIP call as proposed exceeds EPA's authority.

We urge that EPA significantly revise its proposed SIP call to address these and other concerns that will be
set forth in our written comments. Thank you for the
opportunity to appear this morning.

MR. WILSON: Thank you.

Mr. Murphy.

MR. MURPHY: Good morning. I'm Jim Murphy,
environmental advisor for Allegheny Power. Since oral
testimony is limited to only five minutes, I will limit my
comments to two areas of concern.

My first concern is the proposed SIP call's
inconsistency with OTAG recommendations. The proposed ozone
transport SIP call contains numerous references to EPA's
intention to implement the recommendations of OTAG.
However, Allegheny would argue that EPA has in fact ignored
the OTAG recommendations concerning utility NOx reductions.

One of OTAG's major modeling air quality
conclusions was ozone benefits are greatest where emission
reductions are made and diminish with distance. It was
because of this conclusion that OTAG did not recommend a
region-wide NOx reduction control strategy.

OTAG further recommended states must have the
opportunity to conduct additional local and subregional
modeling and air quality analyses as well as develop and
propose appropriate levels and timing of controls.

Finally, OTAG recommended the range of utility NOx
controls in the fine grid fall between Clean Air Act controls and the less stringent of 85 percent reduction from the 1990 reg, or 0.15. It should be apparent that the OTAG recommendations do not support the scope or stringency of EPA's proposed SIP call: One size fits all 22-state reduction strategy.

In accordance with the OTAG recommendations, Allegheny requests the EPA provide states the opportunity to conduct additional local and subregional modeling prior to a final determination of the appropriate levels and timing of controls. However, recognizing the need for some minimal level of region-wide utility NOx reductions to address local and subregional ozone nonattainment areas, Allegheny endorses the 2-phase implementation strategy which will be proposed later today by the Alliance for Constructive Air Policy.

This strategy is similar to that being implemented now within the Northeast ozone transport region. It also conforms to the recommendations made within the section 126 petition filed by Pennsylvania in August 1997.

Conforming to the requirements of Pennsylvania's section 126 petition is significant since the state would obviously be most impacted from any upwind non-OTR states. In fact, recently completed modeling studies for
southwestern Pennsylvania indicated that no more than a 55 percent reduction would be required from local adjacent upwind areas in order to achieve and maintain compliance with the current 1-hour ozone standard.

My second concern is with the calculation of the state growth factors. Allegheny commends the EPA for attempting to accommodate the growth in utility generation heat input between now and 2007 in order to calculate state utility NOx budgets. However, Allegheny has a practical concern with the methodology being proposed.

First, let me preface my remarks by stating I do not pretend to understand how the IPM model determines future state utility generation. I suspect the various assumptions and calculations within the model itself would be highly debatable.

My concern is the method of using the model output data to calculate state growth factors. This concern is based on the use of IPM model projected growth between one period, 2000 to 2010, to calculate a growth factor for use between a second period, 1996 to 2007.

The problem with the EPA methodology is that it doesn't account for the projected growth between 1996 and 2000. For example, Allegheny questions the relatively low growth rate of 5 percent for the State of West Virginia.
Based on the IPM results, West Virginia is projected to experience a 37 percent increase between actual 1996 heat input and IPM projected 2000 heat input. However, between 2000 and 2010, IPM projects only a 4.7 increase. By using the lower growth rate projected between 2000 and 2010, EPA prorates only a 5.1 percent increase between 1996 and 2007, which completely ignores the projected 37 percent growth between 1996 and 2000.

The EPA could eliminate this inconsistency by prorating the 1996-2007 growth factor using the projected growth between actual 1996 and IPM 2010 and eliminating the use of the 2000 projections. Using this method, the West Virginia straight growth factor would be a more reasonable 34 percent.

Allegheny appreciates the opportunity to comment on this proposed rule and plans to submit more extensive written comments by the March 9, 1998, deadline. However, Allegheny also requests the EPA to formally extend the comment deadline an additional 120 days after publication of the upcoming supplemental notice of proposed rulemaking.

Thank you.

MR. WILSON: Thank you.

MS. BECK: Hello. My name is Kathy Beck and I'm here offering a statement on behalf of Steve Roberts, who is
the president of the West Virginia Chamber of Commerce, here to comment on EPA's failure to comply with the Small Business Regulatory Enforcement Fairness Act of 1996. We support clean air just as we support a fair allocation of clean air burdens. But we also support the principle that no agency should be above the law when pursuing that goal.

The West Virginia Chamber of Commerce has as its mission the goal of being an action-taking business organization. We are the largest business organization in West Virginia, but its members are principally small businesses; 97 percent of the businesses in West Virginia are small businesses. We seek not only to improve the state's business climate for these members, but also to improve the state's quality of life.

Small businesses are the catalyst for employment. Small businesses have created jobs over the past five years for West Virginia, whereas larger businesses have reduced their work force numbers.

The West Virginia small business sector also provides empowerment for minority interests. Women owned businesses have increased 64 percent; African American businesses by 50 percent; and Hispanic businesses by 76 percent. These are fragile businesses, however.

In 1996, business bankruptcies increased by 3.5
percent; business failures rose by 2.4 percent.

It is this particular vulnerability of small businesses that gave rise to SBREFA. Congress recognized that the small business sector is critical to job creation in today's economy, but in many ways it shoulders more costs and burdens than necessary in complying with uniform national regulation. Thus, SBREFA was intended to make federal agencies more responsive to the unique characteristics and capabilities of small businesses.

Nowhere is this mandated accountability to small businesses more important than in the development stage of the regulatory process. As Congress recognized, basic regulatory frameworks are frequently fixed at the point of formal proposal. This recognition was an important basis for Congress' conclusion that agencies should no longer be able to sidestep the Regulatory Fairness Act through perfunctory or unsupported certifications either at the proposal or the final rulemaking stage.

During both the initial and the final regulatory flexibility analyses, SBREFA requires an agency to provide information about the impact of the proposed regulation on small businesses. These analyses are required to ensure that the agency fully considers alternatives for small businesses that would minimize the undue compliance burdens.
If the agency determines that alternatives are not acceptable, SBREFA requires the agency to inform small businesses of its reasons and why each one of the alternatives was rejected.

SBREFA also incorporates important new checks and balances on these determinations by bringing in the Office of Management and Budget as well as the Small Business Administration. Thus, SBREFA is an important vehicle for small businesses to join in the public participation process by allowing businesses an opportunity to evaluate the proposal, consider mitigation, and also the basis for the conclusion that there are no alternatives. They can then respond with perspectives that may not otherwise have been reflected in the rulemaking. This SBREFA framework fulfills the purpose of encouraging effective participation. It also helps states as they are trying to implement the program.

EPA has disregarded these protections for small businesses by certifying that SBREFA does not apply. This certification was not based on analysis of the proposal's potential impacts on small businesses, many of which can be major sources under current rules. Nor did it reflect an analysis of likely impacts if states are unwilling or unable to meet their reduction budgets by focusing on very large combustion sources.
Rather, EPA has ignored its responsibility under SBREFA by trying to separate the effect of this regulation on the states from the impact of the regulation on small and other businesses. EPA in effect says SBREFA does not apply because no entities are being regulated. Yet it says states are simply being told to regulate sources under severe sanctions if they do not promptly comply. This exercise and the legal semantics clearly is contrary to the intent that Congress had in mind when it developed SBREFA.

It is implausible to say that this regulation will not have a huge, let alone significant, economic impact on small businesses in West Virginia. Under the SIP call, West Virginia is subject to greater burdens than any of the other 21 states identified. Overall, West Virginia faces NOx reductions of 44 percent, and in some cases certain categories of sources would be required to reduce in excess of 85 percent.

This heavy burden imposed on West Virginia is exactly the type of agency activity for which SBREFA is necessary. To avoid potentially severe sanctions under the Clean Air Act, West Virginia will soon have to begin developing a revised SIP without any EPA direction to evaluate impacts on small entities or EPA guidance on acceptable ways to identify or reduce impact on small
entities. Without such EPA direction, the states will be loath to pursue mitigation that EPA might later disapprove. Moreover, because SBREFA was not followed at the proposal stage, it will never be applied to the reductions proposed by EPA.

SBREFA outreach to small entities, the SBREFA Advocacy Review Panel, as well as the panel's report are required prior to a proposal. The states are not required to follow SBREFA. Thus, small businesses in West Virginia could have to incur considerable costs to comply with West Virginia's revised SIP without any of the protections that Congress required federal agencies to provide under SBREFA.

This is why we have sought immediate judicial review of EPA's certification that SBREFA does not apply to the proposed SIP call. Small businesses in West Virginia and other states must have a meaningful opportunity to address EPA's views of the SIP call's impact on their particular position in the economy. By not complying with SBREFA, EPA has failed to fulfill its congressionally mandated commitment to minimize the SIP call's impact on small businesses to the maximum extent practical.

We therefore urge EPA to suspend and defer further action on the SIP call pending completion by EPA of all steps necessary to satisfy the requirements of SBREFA. At
that point a supplementary proposal could cure the current defects without EPA and the states losing additional time and resources that would be sacrificed if EPA sticks to its current position.

Thank you.

MR. WILSON: Thank you.

MR. SEITZ: Two quick clarifications, and I just ask that they be submitted with your comments. John, you made a comment about 176 and 184. Could you please in your comments address the obligation a state has on 110 as far as interfering with another state's attainment ability? I understand your 176 and 184, but since you are citing those, would you also take a look at 110 and what your obligation is there as you submit your comments, please?

MR. JOHNSTON: Certainly.

MR. SEITZ: Mr. Murphy, did I hear you correctly, that you said that the analysis either you or the Commonwealth of Pennsylvania has done shows that a 55 percent reduction produces attainment in Philadelphia?

MR. MURPHY: No. I said in southwestern Pennsylvania.

MR. SEITZ: You're saying that the only obligation is to southwestern Pennsylvania. When you look at 55 percent reduction, would you address your comments on
transport into Philadelphia within the Commonwealth of Pennsylvania?

MR. MURPHY: Certainly.

MR. WILSON: Thank you all for coming. We appreciate your taking the time to come today.

The next panel is Mr. David Cesareo, Mr. Allen Bedwell, and Mr. Stanley LaBruna.

MR. CESAREO: Good morning. My name is David Cesareo, and I am here for PECO Energy Company. I am the director of environmental affairs.

Before getting to the details of why we support EPA taking action under section 110 of the Clean Air Act to address the ozone transport issue, I would like to provide a few words regarding our company.

PECO Energy is an operating utility providing electric and natural gas service to the public in southeastern Pennsylvania. We provide electric service to about 1,900 square miles and a population of 3.6 million people.

Our electric service distribution area includes Bucks, Chester, Montgomery, Delaware, and Philadelphia counties. These counties are classified as being severe nonattainment under the 1-hour ozone standard and will likely have a similar classification under the revised
8-hour standard approved last summer.

During 1996 generation operated by our company produced approximately 32 billion kilowatt hours of electric power. Over 70 percent of this generation was produced by nuclear and hydroelectric sources which do not produce any nitrogen oxide emissions.

I am here today to offer PECO Energy's support of EPA action under section 110 of the Clean Air Act, which addresses the issue of ozone transport.

Through the OTAG process and other scientific policy investigations, it is clear that a significant reduction in transported ozone and its precursors is needed to support attainment and maintenance of the federal ozone standard in many regions of the country, both inside the Northeast ozone transport region and in the states to the west and the south.

For EPA's section 110 regulations to provide necessary levels of environmental benefit in the most cost-effective and competitively neutral manner, we suggest the following points:

At a minimum, the 22 states proposed for coverage must participate in the program to ensure a significant reduction of ozone and precursor transport into the eastern United States.
During the May to September ozone season a cap on total nitrogen oxide emissions from source categories in the region proposed for the coverage is necessary to achieve the desired environmental benefit.

To support the most effective cost-effective reductions, trading should be allowed without geographic restriction between and within the states proposed for coverage.

To create equitable treatment for covered generation sources, a single methodology with a single emissions limitation such as has been proposed by the EPA should be used to calculate state NOx budgets. Recent year operations such as have been selected by EPA should be used as a baseline to calculate state emission budgets for the electric generation component of the program.

We believe it will be most appropriate to set state budgets based on an average of the two highest ozone season state heat input totals between the years 1995 and 1997 to reduce any potential inequities that might exist from unusual operating circumstances at the state or generation company levels in any given year.

A single growth factor for the area proposed for the coverage is preferable to the state-by-state factors in calculating growth between the baseline period and the year
2007.

We agree with EPA that the issue of growth should be addressed in the regulation. We believe, however, that the marketplace is a better place to determine where the growth will take place rather than the regulation, which needs only to estimate a level of growth expected in the 22-state region.

Implementation of section 110 emission reduction requirements for the electric generation sector should be coordinated with the final phase of the Northeast Ozone Transport Commission's NOx memorandum of understanding scheduled to begin May 1 in the year 2003.

Again I thank you for the opportunity to present an overview of some of the comments we expect to further discuss in our written comments. We support EPA taking action under section 110 to address the ozone transport problem, and we firmly believe that attainment of the federal ozone standard is not possible without a reduction in transported ozone and its precursors.

Thank you.

MR. WILSON: Thank you.

Mr. Bedwell.

MR. BEDWELL: Good morning. My name is Allan Bedwell. I'm deputy commissioner of the Massachusetts
Department of Environmental Protection. It's good to see you.

We are all here today because we are all victims. Not just victims of air pollution, but victims of a bizarre and well entrenched legal scheme that has historically held polluters harmless as long as the ecological and public health damage that they cause occurs outside the perimeter of the state in which they operate.

EPA's proposed SIP calls represent an initial step forward to begin closing this loophole, a grandfathering loophole that has for more than two decades allowed upwind air pollution sources to operate grossly, unfairly, and irresponsibly, not to mention unneighborly.

The question before us today is this. Will the Clinton/Gore Administration make this step small and tentative, or will they have the political courage to act on their purported convictions and step across the bridge they are seeking to build into a fairer and more effective future of environmental regulation?

There is cause for concern. Large, well-heeled interests, particularly electric utilities who are already nervous about losing their protected monopoly status, are doubling their risk that people are now talking seriously about leveling the playing field. As the day draws near
when fair competition rules the land and all power
generators are held to the same environmental and economic
standards, some political leaders will seek to curry favor
by delaying the inevitable. Some already have. And you
know who you are.

But if you believe fairness is a basic tenet of
America's social and political fabric, then legal tools such
as section 110 SIP calls will help ensure that correct and
responsible behavior will soon prevail despite short-term
political obstacles.

The reason the majority of the 34 million
Americans who live in the Northeast support the new, more
protective ozone and particulate standards, the proposed 110
SIP calls, and the pending section 126 petitions is not
because of any great eagerness to pay the economic cost of
making deeper air pollution reductions. But we are prepared
to do just that. Quite the contrary. We want to once and
for all be done with the struggle to meet minimum
health-based air quality, and we know that we cannot achieve
that hoped for future without first cleaning up the border
conditions.

We know from experience how difficult it will be
to convince others of the inevitability of the fairness we
seek through the proposed 110 SIP calls. We know because we
have tried a number of arguments. Political arguments, for one. For example, that the Northeast has already paid more than its fair share in making deep reductions in NOx emissions.

In Massachusetts alone, from 1990 to 1996 we have reduced NOx emissions from 41,000 tons to 16,000 tons, and by the year 2003 we will have reduced NOx emissions down to 12,000 tons, a 78 percent reduction. Yet, because of transport from grandfathered generators, we still will not be in attainment with current health-based standards, let alone future health-based standards.

We have also tried legal arguments. For example, if states do not adhere to the 110 SIP call process and either the states or EPA delays emission reductions, then we will seek controls on specific utility sources through our 126 petitions. Simply put, our 126 petitions are the fail-safe that gets the Northeast the clean air it deserves by taking away any discretion from midwestern states and how they control sources.

Finally, we have also tried economic arguments. For example, the low cost electricity producers outside the Northeast enjoy such a huge price differential now that any cost increases they may face could easily be absorbed and high cost Northeast utilities could still be handily
undersold. I've even heard that at least one important Midwest utility company has hinted they would be willing to absorb one or two mills of increased cost per kilowatt hour now just to get this issue behind them and be first in line for future sales.

Clearly, we in the Northeast have made a number of compelling and intellectually honest arguments in favor of EPA doing the right thing, and EPA's proposed 110 action is a step in the right direction.

However, intention is one thing, and follow-through is another. Now is the time for the Clinton/Gore Administration to follow through on its promise to protect the health of 34 million Americans in the Northeast. Stick to your guns.

If we are to prevail in achieving either the existing or proposed air quality standards, we must make deep reductions in NOx emissions across most of the eastern U.S.

If the Administration takes action by calling for real and timely reductions with no backsliding on budgets, the SIP calls will demonstrate that improved health protection can be achieved through cost-effective, common sense control strategies. Timely and real reductions will demonstrate the Administration's sincere resolve to take
cost-effective actions to protect public health.

The Clinton/Gore Administration has promised to protect the health of citizens in the Northeast. They promised, and now it's up to EPA, and it's in EPA's power to make that commitment a reality. All eyes are now on the Administration to see if real political courage backs up that commitment.

Thank you for your time.

MR. WILSON: Thank you.

MR. SEVENSEN: Sitting in here for Stanley LaBruna today, who couldn't make it down, my name is Eric Sevensen. I'm manager for environmental policy at Public Service Electric & Gas Company (PSG&E). I'd like to thank EPA for the opportunity to comment on this important rulemaking. I have a full written statement that I have provided to you in packets, but they are also out in the front reception area.

Since 1990, PSG&E has spent over $1 billion in investing in clean, state-of-the-art gas turbine combined cycle repowerings and other emission control technologies. As a result, we have reduced our NOx emissions by over 70 percent, and we have gone from representing 27 percent of the New Jersey statewide NOx inventory to representing just over 5 percent in 1997. Quite an accomplishment. Moreover, 1995 data showed that the average NOx emission rate for each
megawatt hour of electricity that we produce is the fifth
lowest among the 50 largest electric utilities in the
eastern United States.

But local reductions are not going to be enough to
deliver clean air to New Jersey and the other northeastern
states. This has led us to look upwind of our state
borders. PSG&E has demonstrated that cost-effectiveness of
NOx control technologies provided public support to EPA for
the new NAAQS ozone and particulate matter standards and has
been in the forefront of identifying the need for control of
power plant emissions concurrent to industry restructuring.

Thus it should be no surprise that I'm here today
to tell you that PSG&E fully supports EPA's conclusion that
reducing NOx emissions from the electric generators is the
most cost-effective solution to the regional ozone transport
problem.

Further, PSG&E believes that the cost of
implementing power plant NOx controls will be easily offset
by the cost savings to be realized from the electric
industry restructuring. We explain this view more fully in
a report we released last fall, which we put in a packet
that you have before you. There are copies of the report
out on the front desk.

My main purpose today, however, is to focus on the
six key principles that PSG&E believes need to be in the forefront of the dialogue about the proposed NOx transport rulemaking.

1. Regional NOx emissions must be limited to 490,000 tons during the ozone season. OTAG analyses demonstrate that NOx emissions must be limited to approximately 490,000 tons during the ozone season; to resolve this problem by reducing power plant NOx emissions to an equivalent of 0.15 pounds per million Btu on a heat input basis.

No doubt today you are going to hear from some who would argue for a lesser standard. Following their advice would be a terrible mistake. For example, controlling instead to a level of 0.25 pounds per million Btu would have the emission impact of adding 326,000 tons of NOx into the air, an equivalent of over 50 million new NLEV cars, which you have in your packet.

Rather than detail the matter, however, I brought with me a copy of the report by NRDC and PSG&E that fully details why we need to reduce NOx emissions to approximately 490,000 tons during the ozone season. I would ask that this report be included in the record of these proceedings.

2. The most cost-effective way to achieve the NOx reductions is to impose a uniform control standard on power
plants along with their emissions trading program.

The proposed level of NOx controls on electric generators, implemented in conjunction with an emissions trading program, represents the single best measure available to EPA to address the regional nature of the ozone problem, especially in light of the revised 8-hour ozone standard.

EPA should keep two points in mind when implementing these controls.

First, the required power plant controls must be imposed uniformly. In a deregulated utility industry, nonuniform power plant controls will lead to increases in operation at older and dirtier coal burning units in the Midwest and Southeast, resulting in a significant NOx emission increase. I believe that is being demonstrated already through the report that NESCAUM just recently released.

Second, as demonstrated by the acid rain trading program, implementing a trading program concurrent with power plant controls will significantly improve the cost-effectiveness by reducing the cost of compliance. A trading program will also provide companies with the flexibility that a few may need to achieve timely compliance.
3. An emissions cap is needed to ensure that the environmental benefits of the proposed rulemaking are preserved over time.

The importance of a seasonal NOx cap cannot be overstated. If seasonal NOx are not capped, the benefits of today's efforts to address ozone transport will be lost over a relatively short period of time as electricity demand grows.

4. The emissions cap should use an output-based performance standard initially set at 1.5 pounds per megawatt hour.

EPA must design the right kind of cap, one that sends the right marketplace signals to encourage energy efficiency and technology advancements. PSG&E's experience with caps, based on historical operation of plants, tends to reward utilization of dirtier sources. Instead, EPA should implement a cap based on output standard. That is, EPA should allocate emissions based on a utility's output in terms of megawatt hours of energy as it is produced rather than its input based on a historical amount of Btu of fuel consumed.

MR. WILSON: Your time is up.

MR. SEVENSEN: I will finish up real fast.

5. The proposed NOx emissions controls should be
fully implemented by September 30, 2002.

6. The SIP call is a significant start for reducing NOx emissions from the electric utility sector, but ultimately an environmental title to federal restructuring legislation is needed if we are going to solve problems like climate change, regional haze, and mercury associated with the same plants.

Thank you very much.

MR. WILSON: Thank you.

MR. SEITZ: Just one question, Mr. Bedwell. I think you said earlier in your testimony -- I forget the total tonnage -- you have certain reductions in place with the final step-down to 2003. What does that 2003 step-down relate to in either a percent reduction or pounds per million Btu?

You heard earlier comments, I assume, about the ability to comply with that if you have state rules in effect that get you there. Did you take a look at this issue or see an issue with compliance as a problem for the utilities in Massachusetts?

MR. BEDWELL: First of all, we are expecting that about the 12,000 ton cap that we will have in 2003 will get us close but not to the 1.5 pounds per megawatt hour or .15 target in the SIP call. We are fully planning to get there,
though, and we are very hopeful that the SIP calls remain as a standard. In terms of that standard, we are pledged to getting the .15. So it would actually reduce lower than 12,000. That's our agreement under the NOx MOU for the OTC.

MR. SEITZ: Does that mean you have rules in place already in Massachusetts, or are you in a rulemaking schedule for that now?

MR. BEDWELL: We have actually already concluded the rules. We are the first state to have done that.

MR. SEITZ: In connection with that, if you have got any information concerning the ability to comply or some of the issues raised earlier, I'd appreciate you submitting that for the record.

MR. BEDWELL: Yes. Our utilities are fully pledged to meeting that goal. If I just might add quickly. For those that think that a NOx cap and trade system is impossible to do in a short amount of time for the eastern U.S., we were able to come up with a full agreement with our utilities in six weeks to establish a cap and trade program.

MR. WILSON: Maybe we can get your help in working out our cap and trade program and see if we can do that in six weeks.

MR. BEDWELL: We'd be happy to help.

MR. WILSON: Thank you all for coming.
That concludes the series of witnesses we had
scheduled for this morning. We are a little ahead of
schedule. Because we gave people rough times, rather than
move ahead with another panel, we will just break earlier.

[Whereupon, at 11:15 a.m., the hearing was
recessed, to reconvene at 1:00 p.m., this same day.]
AFTERNOON SESSION

[1:05 p.m.]

MR. WILSON: Welcome back.

The first panel is Mr. Bob Hodanbosi, Mr. Ken Colburn, and Ms. Sarah Wade.

MR. HODANBOSI: Thank you for the opportunity to present comments on behalf of the Ohio EPA. My name is Robert Hodanbosi, and I'm chief of the Division of Air Pollution Control. In my brief time today I would like to address Ohio's concerns with U.S. EPA's proposal. Our concerns can be summarized in five points.

1. The amount of time that U.S. EPA has provided for states to submit subregional modeling in response to this proposal is unreasonable.

2. U.S. EPA does not have the legal authority to make this broad sweeping proposal without having made an exact determination of the impact of the sources on air quality.

3. U.S. EPA does not have the legal authority to tie this proposal to the 8-hour air quality standard.

4. U.S. EPA does not have the legal authority to tie this proposal to any action under 126 of the Clean Air Act.

5. U.S. EPA does not have the legal authority to
extend the SIP call to attainment areas hundreds of miles away from the nation's remaining nonattainment areas.

First, some background information.

As a result of the 1990 Clean Air Act Amendments, Ohio had seven metropolitan areas designated nonattainment for ozone. As a result of our extensive air pollution control programs in Ohio, six of those seven areas have been redesignated to attainment. The remaining nonattainment area, Cincinnati, had one monitor in the most western part of the state with a fourth high reading of 0.125 parts per million for one hour last summer. But for this exceedance in the southwest corner of Ohio, the entire state has achieved the standard, with all the remaining 33 ozone monitors to the north and east of Cincinnati meeting the 1-hour ozone standard.

U.S. EPA's proposal is an outgrowth of the work and recommendations of the Ozone Transport Assessment Group (OTAG). During that multistate cooperative process we were given assurances from U.S. EPA that states would be provided with adequate time to conduct subregional modeling in order to provide U.S. EPA with an alternative demonstration of the reductions that are needed to meet the air quality standards. Instead, U.S. EPA has provided only 120 days for states to present comments and subregional modeling.
Ohio EPA had requested an additional 120 days to submit additional modeling, and as part of our testimony today Ohio repeats its requests for more time. This is consistent with OTAG recommendations that subregional modeling be performed.

The OTAG work produced numerous modeling results that illustrated the effect of reductions in the OTAG region. This was done to illustrate what the air quality benefit would be of large scale reductions. The OTAG work was not intended to be an attainment demonstration.

In contrast, U.S. EPA SIP call must be more regulatory in nature. U.S. EPA needs to quantify the benefits the proposal will have on air quality in the remaining nonattainment areas, but they have failed to do so. If U.S. EPA completes such an analysis due to the critical nature of these results, we request that U.S. EPA allow for a formal comment period on the modeling.

U.S. EPA has stated that these reductions will also assist in the achievement of the 8-hour standard. This may be an accurate statement. However, the 8-hour standard cannot and should not be used as a reason for this action. U.S. EPA has promulgated a separate regulatory action and a schedule for attainment of the 8-hour standard that should be followed.
Similarly, U.S. EPA has attempted to intertwine the 126 petitions filed by some Northeast states to the SIP call. Again, if U.S. EPA has any authority to act on these petitions, and we strongly contest the ability of U.S. EPA to grant these petitions, it should be handled separately.

I have outlined our concerns about U.S. EPA's proposal. Let me summarize what positive action we plan to take in response to this action.

Ohio EPA has entered into a memorandum of understanding with the states of Kentucky and West Virginia to complete subregional modeling. The purpose of the modeling is to determine what reductions of nitrogen oxide are needed to assure attainment of the ozone standard in the Cincinnati and Pittsburgh areas. This modeling will fulfill our commitment consistent with the final OTAG recommendations that there be reductions on a subregional basis to assure attainment of the standards throughout the subregional area.

The time frame allowed by U.S. EPA to submit comments in this process is quite abbreviated, and we will do our best to submit modeling associated with the alternative analysis. However, due to the short comment period, we will not be able to submit the detailed analysis that we would desire. Later this year we will submit
additional modeling to U.S. EPA for consideration.

Ohio has one of the nation's leading coal development programs. This is a cooperative effort between the State of Ohio and many of Ohio utilities to develop cost-effective techniques to reduce emissions from Ohio utilities.

As some of these new technologies are further developed, Ohio utilities may be in a better position to further reduce nitrogen oxide emissions in a cost-effective manner. However, U.S. EPA's proposal would force all of Ohio's coal burning units to expensive selective catalytic reduction and not permit the use of much more cost-effective technologies currently under development.

MR. WILSON: Bob, your time is up. If you can wrap up.

MR. HODANBOSI: Finally, any final rule promulgated by U.S. EPA should not require a greater percentage of nitrogen oxide reductions from Ohio sources from a 1990 baseline than any other state affected by the SIP call. Any strategy that targets an individual state or small group of states for large-scale reductions cannot be technically justified.

Thank you for the opportunity to present these comments.
MR. WILSON: Thank you.

Mr. Colburn.

MR. COLBURN: Thank you, Mr. Wilson. I'm Ken Colburn. I'm director of the Air Resources Division of the New Hampshire Department of Environmental Services. I'm here today appearing in general support of EPA's proposed SIP call.

Fed up with transported pollution into New Hampshire, the state notified EPA in July 1995 that it planned to file a 126 action. EPA suggested that we wait and let the OTAG process roll out. We did so; participated fully in OTAG; and following OTAG, filed the 126 petition that included all upwind states, as indicated by available modeling, that contributed significantly to the State of New Hampshire.

Subsequently, New Hampshire also opted into NLEV consistent with OTAG's recommendation, and now we support EPA's proposed transport SIP call also as being consistent with OTAG's recommendation. Let me detail four reasons why.

The first is its cost-effectiveness. It focuses on utility controls, and utility controls are the most readily available, least costly to achieve on a dollar per ton basis. I have some familiarity with that because I chaired an effort during OTAG to objectively assess the
utility control costs, and based on actual experience and comprehensive market quotations, those numbers came in at about half inflated utility estimates.

New Hampshire also has some of the only real coal retrofit experience. We retrofitted the Merrimack station, Merrimack Unit 2, which was probably a worst case example because it was a cyclone boiler on which we were installing SCR, and still came in at only $400 a ton. Some said we started with a particularly dirty plant. If you have the starting point and double the control costs, you are still well under $1,000.

Of course utility overstatement by a factor of two is progress. In the sulfur situation it was by an order of magnitude or more. NESCAUM has detailed this in a historical review of control cost estimates and their actualities, and CCAP has analyzed the ratepayer impact, which, as you know, the dollars for NOx controls get lost in the noise and are well under the benefits provided by deregulation.

Further, it is increasingly likely that even the lowest cost estimates will be overstated. I'm made aware that Union Electric in St. Louis, Missouri, is now operating tangential units at 0.22 pounds per million Btu, shooting for 0.15, this through combustion modifications only. We
were told during OTAG by utilities that 0.15 would require
broad SCR and would eliminate any possibility of trading.
Now it appears that that point may be reachable without any
bolt-on end of pipe controls.

In addition, Thermal Energy International has just
announced a new technology that they indicate is capable of
reducing 90 percent of NOx with a 3- to 7-year payback.

What this appears to me to be is an application of
typical American ingenuity to the NOx reduction problem and
once more evidence of the fact that when you ask an engineer
to do something, you get nothing but problems; when you tell
an engineer to do something, you get nothing but solutions.

The cap and trade program that EPA is developing
will further reduce compliance costs, and we would be
supportive of a clean air fund to meet utility compliance
obligations. My hunch is that fund wouldn't build up too
significantly if the costs were set at about $2,000 or less.

The second reason is that the SIP call recognizes
the state of the science. We started OTAG with NOx and
VOCs. OTAG modeling rapidly showed that the NOx was the
culprit. This shouldn't have been a surprise, given the
negative VOC coefficients in rethinking the ozone problem,
now almost ten years old.

It also recognizes the extent of transport, that
transport that is made at the summit of Mount Washington. Ozone there is on the order of 15 PPB higher than right at its base, and most of those highs occurring near midnight. It also recognizes and understands the nonlinearity of the NOx reduction/ozone reduction curve.

You will hear utilities offering foolish yardsticks for small reductions, 20 and 30 percent NOx, that should be measured on the basis of billions of dollars per PPB reduced. This implies a linear relationship between ozone reduction and NOx reduction. I have used the analogy of pushing a car in the past. You need to get over the inertia of the system, get over the NOx saturation before you reach pay dirt.

Finally, I would just add that transport is no longer rocket science. The techniques exist today to determine the precise amount of ozone contribution by state or even sub-state regions. I would cite for that the culpability analyses developed in New Hampshire or the analyses put forward by Doraset and Rowe, et al, out of New York.

As an aside, I would note that lengthy resource-intensive ramps or ramp-like ideas are an idea whose time has passed.

The other two reasons. The SIP call will markedly
reduce ozone in not only the Northeast, but in the Ohio River Valley and the South, and it would be rational in light of greater harmonization with the new standard for acid rain, and so forth.

In conclusion, I would just suggest that it is a remarkably cost-effective, reasonably consistent with science and OTAG SIP call proposal. Rather than as some would suggest, that your response should be just say no, we would use another media axiom and do what New Hampshire recommends and has already implemented: just do it.

MR. WILSON: Thank you.

Ms. Wade.

MS. WADE: Thank you.

My name is Sarah Wade. I'm an economic analyst with the Environmental Defense Fund, and I am presenting comments on behalf of the Environmental Defense Fund today.

My organization has participated in several efforts to address ground-level ozone over the past several years. Most recently, we have worked on OTAG.

We believe the OTAG has demonstrated that in order to address the interstate transport issue large reductions in NOx emissions are going to be needed in states ranging as far west as Wisconsin and Missouri and as far south as Georgia and Alabama.
It's our expectation that the demand for these reductions is only going to increase in the future as additional environmental problems such as acid rain, the new NAAQS standards, and eutrophication of some of the waterways demand additional attention from policymakers.

We also think the OTAG process revealed strong support for the use of economic incentives to ease the financial burden of making emission reductions while at the same time fostering the development of new emission control technologies. We believe this approach and the flexibility inherent in it will become even more important as the OTAG states restructure their electric utility industries.

Given these pressures, EDF believe that the states and EPA currently have an enormous obligation to develop sound and reasonable environmental policies to address ground-level ozone and also to establish standards and approaches for the development of future environmental policies.

It is in that light that we wish to echo the comments that are going to be offered by David Wooley on behalf of the NOx control advocates later tomorrow, and we also offer additional comments.

Our first area of comment regards the NOx emission budgets. While EDF applauds this approach, we are concerned
that EPA is not going to fully implement these budgets as expressed in the current rulemaking. Therefore we urge EPA to do the following:

Set caps at levels that minimize the impact of transported ozone and its precursors into downwind areas.

Second, if the control measures such as the NLEV program become available, we suggest that EPA maintain the integrity of the cap by folding those sources into other programs such as the NOx cap and trade as opposed to recalculating the budget.

We also think that states need to be held accountable for meeting the NOx emissions cap. They should be encouraged to build compliance margins into their SIPs. We also think there should be a more aggressive mechanism for enforcing against exceedances of the cap, and there should be some offset of reductions in future years when that happens, or if that happens.

Also, given that the budgets include room for growth and that the IPM method may prove to significantly overestimate growth, we think careful consideration should be given to the design of banking programs. We are concerned that early surpluses may in fact create perverse air quality impacts later on.

Our second area of comment regards timing. EPA
has already allowed the states to delay implementation of the NOx control strategies in order to accommodate OTAG. That has been a lengthy process, and there are at least three years now before some of the SIP requirements are due to be implemented. We think that is plenty of time. There should be no further excuses for delay in implementing them.

In addition, we also believe that EPA should be prepared to implement a FIP or to enforce section 126 if states fail to submit approvable SIPs in 1999.

Finally, our third area of comment regards the criteria for approving SIPs. EDF agrees with EPA that states should be free to design their own programs, particularly programs that meet the individual needs of their sources. However, given the uncertainties surrounding the growth factors in the NOx budgets, we think EPA should adopt a very high level of scrutiny in reviewing these SIPs.

Specifically, we think that lower than predicted growth should not count as a control strategy. We agree with EPA in that assessment. Prior to 2007, when the transport analysis is completed by EPA, we believe that if growth factors used to determine the budgets are determined to be significantly overestimating growth, then the budgets should be changed to reflect the application of the original emission assumptions to the new growth factors.
Similarly, when evaluating the enforceable measures adopted by the states, we think EPA should request that states include a method for reconciling predicted activity levels and actual activity levels. If the delta between these levels is significant, there should be some method for holding the environment harmless.

We also believe that states should not be allowed to let sources affected by enforceable measures use emissions trading unless the state can demonstrate that the emissions budget for the entire sector of the source in question will stay within its cap. This is especially true if states fail to adopt a cap and trade program.

We believe that the level of scrutiny is even more important in the context of interstate trading. EPA has clearly endorsed the idea of a budget, and it's imperative that states indicate how they are going to maintain the integrity of those budgets.

Trading programs such the type envisioned in the open market trading guidance often fail to maintain caps, and therefore, even though EPA has suggested it could be an option for implementing trading, we don't agree.

Finally, we applaud EPA's effort to encourage energy efficiency, but we caution against giving that any less rigorous review than any other control technology.
Under a firm emissions cap, if energy efficiency does provide emission benefits, it should be demonstrated in the cap, and if it's not, then from an air quality perspective it doesn't help us.

Thank you for the opportunity to give these comments.

MR. WILSON: Thank you.

Mr. Hodanbosi, I have a couple questions for you. You mentioned near the end of your statement about Ohio not having a more rigorous reduction requirement than other states. Could you explain that a little bit? Did I hear that right?

MR. HODANBOSI: Yes. Going back to the acid rain debate, at one time there was a proposal for, I think it was, the 4-state option where Ohio, West Virginia, Kentucky, and Indiana would take all of the reductions of sulfur dioxide. We certainly wouldn't want that kind of proposal where there are just individual states singled out for NOx reductions as it was at one time proposed for SO2.

MR. WILSON: Do you support a uniform requirement such as we proposed?

MR. HODANBOSI: No. I'm just saying that I would not want individual states singled out for attaining the bulk of these reductions.
MR. WILSON: I'm just trying to understand what is okay in that regard, in terms of differentiating between states.

MR. HODANBOSI: I think what we are suggesting is that you take a look at the subregional modeling that is going to be done, and it is going to show that there will be some reductions that are necessary, but we would not want a package put together that just looks at a few states and says "these two or three states look good" as ways to attain NOx reductions and there are substantial NOx reductions only out of those states.

MR. WILSON: What if the subregional modeling suggests that Ohio needs more reductions than many other states?

MR. HODANBOSI: If there is a technical basis for it, that would be different. What I am suggesting is in the acid rain requirements, that when a plan of that was being floated out there, there wasn't a technical foundation for that.

MR. WILSON: You also implied that we were doing 126 as part of the 110 process. Can you explain that?

MR. HODANBOSI: Even in your opening comments you mentioned the 126 process that is going on and how some of that is being coordinated with this action.
MR. WILSON: Only timing-wise. They are separate processes. That's what our plan was. I didn't know if you had something other particularly in mind.

MR. HODANBOSI: No. I don't have anything more than that, but it is important that they stay and that they are separate individual regulatory functions going on.

MR. WILSON: John.

MR. SEITZ: I'm a little confused. Back to the first issue on the states, to the extent OTAG concluded a coarse grid/fine grid, you are not suggesting that all states are in; you are just saying the analysis for the fine grid states, that within that fine grid there should be some kind of equity between those states, or at least equitable technical analysis.

MR. HODANBOSI: There needs to be a technical foundation for the reductions. If you go down that path, I think you are going to find that there will be some sort of, I don't want to say exact uniformity, but it won't be that there will be just individual states singled out for reductions while other states have none.

MR. SEITZ: But to the extent the OTAG even singled out the fine grid?

MR. HODANBOSI: Oh yes.

MR. SEITZ: Okay. That's what I was trying to
understand.

MR. WILSON: Howard.

MR. HOFFMAN: Mr. Hodanbosi, you mentioned that Ohio and two other states are doing subregional modeling.

MR. HODANBOSI: Yes.

MR. HOFFMAN: Is that intended to look at the impact of those three states all together on just Cincinnati and Pittsburgh?

MR. HODANBOSI: That is the primary focus of the analysis. It would look at an area larger than those three states. As an example, we have to include Indiana. But the modeling is being done under a memorandum of understanding with these three states to conduct the subregional modeling and determine what kind of reductions are needed for attainment of the air quality standards in Cincinnati and in Pittsburgh.

MR. WILSON: When do you plan to have that modeling completed?

MR. HODANBOSI: We are hoping to get that modeling complete and into you by March 8th or 9th. As you know, with all this modeling, you can spend a lot of time trying to refine it and all, and we aren't going to have the ability to get that kind of work done because of the time. We would like to do more work on it, but we intend to give
you a submittal by the deadline.

MR. WILSON: Thank you all very much for coming today.

The next group is Mr. Robert Beck, Mr. John Kinsman, and Ms. Andrea Field.

MR. BECK: Good afternoon. My name is Bob Beck. I'm vice president of environmental affairs at the Edison Electric Institute, and today I am representing the Clean Air Regulatory Information Group, which is a separately funded group within EEI and is part of EEI. I am going to be talking about two different concerns to the industry.

The first one I would like to emphasize is how EPA's SIP call proposal deviates from the recommendations of Ozone Transport Assessment Group, or OTAG. Throughout the SIP call EPA tries to suggest that the only thing that they are doing is to do what OTAG has told them to do.

First, we believe that OTAG recommended subregional modeling and provided 12 months to complete that modeling before EPA would take any action, and the SIP call ignores this.

Second, contrary to what OTAG recommended, the SIP call proposal calls for more NOx reductions than would have been produced by the most stringent of the options recommended by OTAG. It demands that all covered utility
sources meet a NOx emission rate of 0.15 pounds even if that rate represents a reduction of more than 85 percent at the unit.

Third, one of the reasons that OTAG considered a broad range of control levels is that OTAG recognized that the amount and impact of transport vary in different areas of the country, and thus the different areas should not be treated in a one-size-fits-all fashion. Yet the EPA proposal does exactly that.

Fourth, the budget numbers that EPA proposed and the adjusted budget numbers made available since November differ, and in some cases very significantly, from the OTAG budget numbers. So it is our opinion that EPA cannot claim that its proposal is based on the OTAG recommendations.

The second issue that I want to address is EPA's overly optimistic claims about the use of trading to achieve specified reductions and at reduced costs. We certainly support trading at EEI. We have on SO2, and we do on other issues as well. But we have a difficulty here in that even if you get to the levels that are talked about in terms of 0.15, the question is how many excess tons there would be available for selling, banking, trading, et cetera.

Our preliminary analyses indicate that there will not be a lot of excess tons that could be used in this
program because we will be virtually at the limit of the
technology, give or take a hundredth of a pound here or
there.

But even assuming that EPA is right and there
turns out to be lots of excess tons in the program, it
presents another problem, and that is, how can a state
ensure that they will get the NOx reductions when and where
they need them in order to reach attainment in local areas?

If you have a problem in North Carolina, I would
assume that the North Carolina regulators would want the
attainment problem addressed through reductions at the local
level at least, and it might not want that source to have
the opportunity to buy or trade or otherwise avoid making
the actual reductions itself and purchase those tons, say,
from Wisconsin or Indiana or someplace some considerable
distance away.

What we would suggest is that if you are really
interested in a freewheeling trading system and robust
trading system that we do a bit more evaluation on exactly
what kind of a trading system we need while at the same time
looking at the attainment question on a local and a regional
level.

Thank you.

MR. WILSON: Thank you.
MR. KINSMAN: Good afternoon. I'm John Kinsman, manager of atmospheric science at the Edison Electric Institute, which is the association of the U.S. investor owned electric utilities and industry affiliates and associates worldwide.

EEI wishes to focus today on two issues. First, the lack of all necessary data provided by the EPA for the notice of proposed rulemaking. Second, the feasibility of installing the required nitrogen oxide controls in the specified time period.

The documents that EPA has made available thus far in the docket and in the Federal Register notice contain only a general overview of the agency's desire to reduce average NOx emissions from the electric utility industry down to 0.15 pounds per million Btu. These documents, which include substantial inaccuracies and present an inadequate and incomplete analysis, do not justify EPA's proposal.

EPA acknowledged that its proposal was not complete and said that to remedy this problem it would issue a supplemental notice of proposed rulemaking that would include the guts of its program: refined budget numbers, the needed air quality analyses of the proposed budgets, a proposed model cap and trade rule, the proposed rule language, et cetera.
The supplemental notice was originally to be published in early 1998, which would have allowed at least some time for public evaluation of and comment on a complete proposal before the current March 9th comment deadline. Now, though, EPA representatives say the supplemental notice will not be published until late March or early April.

Despite the fact that the supplemental notice will not be out until after the close of the current comment deadline, and even though there is no binding statutory or judicial deadline that would preclude EPA from extending the current comment deadline, EPA has refused requests to extend the March 9th comment deadline.

Not only is EPA's refusal to grant the extension of the comment deadline unfair, but it is not consistent with the Administrative Procedure Act. More information on the legal aspects of this EPA shortcoming will be provided in the written comments on the supplemental notice.

Today we ask EPA to extend the comment period on the entire SIP call package by 120 days after publication of the supplemental notice so that the public may have a complete proposal on which to comment.

A second issue I will address is the feasibility of installing the required nitrogen oxide controls in the specified time period.
EPA's proposal makes it clear that it will ask affected states to revise their SIPs by September 1999 in order to incorporate the range of requirements set out in the SIP call proposal. EPA then proposes to give affected sources three years at most, until 2002, in which to achieve those reductions.

EPA assumes that the best reductions in utility NOx emissions are possible within the 1999 to 2002 time frame. EPA has acknowledged, in response to a Freedom of Information Act request from the Utility Air Regulatory Group, that it has not conducted an analysis to evaluate whether all the SIP call mandated reductions for the multitude of affected plants could be accomplished within three years without serious disruptions to the electricity supply in the eastern U.S.

It has been estimated that over 1,000 utility NOx control retrofits would be required over this 3-year period. This compares with under 300 utility NOx control retrofits under the five years of Phase I of Title IV.

NOx controls vary tremendously from boiler to boiler, and each must be designed individually. Furthermore, low NOx burner technology during Phase I of Title IV was a far more mature technology than selective non-catalytic reduction is now for larger boilers.
Once EPA's final budget numbers are released in the supplemental notice, the industry will undertake such an analysis.

Thank you for the chance to present this statement today. EEI will be filing additional written comments that go into these and other issues in greater detail.

MR. WILSON: Thank you.

MS. FIELD: I'm Andrea Field. I'm here today on behalf of UARG. UARG is concerned that virtually none of EPA's SIP call proposal has been adequately explained or backed up by sound technical analysis. Instead, EPA advocates Clean Air Act interpretations that ignore all those parts of the Act that would prevent EPA from doing what it wants to do, and EPA promises yet-to-be-done technical analyses that EPA says will support its proposal but which will not be available until after the close of the official public comment period.

It is almost as if EPA took the maxim "a little inaccuracy sometimes saves tons of explanation" and decided that if that is so, then a lot of inaccuracy will surely save almost all explanation.

Let me address five issues beyond those raised by Bob and by John.

First, EPA's proposal ignores key statutory
provisions that limit EPA's authority to use the SIP call process to address regional ozone transport issues. Specifically, EPA's use of the SIP call process to address interstate transport issues ignores sections 176A and 184 of the Clean Air Act, which were added to the statute in 1990. Section 176A says that if EPA has reason to believe that emissions from one or more states contribute significantly to an ambient standard violation in one or more other states, then EPA may establish a transport region and commission for those states. Section 184 did this for the Northeast.

The Act thus says that it is transport commissions that must assess the degree of interstate transport, assess strategies for mitigating transport pollution, and recommend measures to EPA for addressing identified interstate transport concerns.

The inescapable conclusion of reading together all the relevant statutory provisions is that Congress intended the Act SIP call authority to be used to address interstate transport only in the context of the authority granted under sections 176A and 184. To say that EPA can use its SIP call authority, as it is trying to do here, without regard to the interstate air pollution program in 176A and 184 would be to read those new provisions out of the Act. EPA may not do
this.

Second, EPA's proposal ignores plain statutory language in section 110 requiring a state-specific showing of SIP inadequacy. Section 110(a)(2)(D) of the Act explicitly requires a showing that every targeted upwind state A individually contributes significantly to nonattainment in downwind state Z.

EPA has not done, and has said it will not do, such state-by-state showings. Instead, EPA will offer a combined impact analysis, a lumping together of the combined impacts of all the targeted states on each other. Such an analysis does not tell what if any impact upwind state A is having on downwind state Z. It does not distinguish between impacts due to local in-state sources and impacts due to transport from individual upwind states.

Third, EPA essentially demands that targeted states impose caps on NOx emissions. This is contrary to the law.

Even if EPA can establish that a SIP is substantially inadequate to mitigate interstate pollution -- and EPA is far from establishing that -- it is up to each affected state, not EPA, to determine how to remedy that substantial inadequacy. EPA's call to the state may be only to revise -- this is statutory language -- the plan as
necessary to correct an identified substantial inadequacy.

Once EPA has called the inadequacy to the state's attention, it is the state's job to determine what revisions are necessary. As the D.C. Circuit held less than one year ago, this "as necessary" language in the statute was added by Congress to "keep EPA within bounds."

Fourth, EPA bases key parts of its analysis on questionable statistical techniques. EPA claims that its SIP call mandated NOx reductions are needed to address future 8-hour ozone nonattainment areas.

Since there is not yet an accepted method for linking OTAG's modeling of a few days to an estimate of an area's 8-hour ozone standard design value for a specific 3-year period in the future, EPA came up with its own methodologies for making that link.

EPA's methodologies cannot survive any peer review process because it uses a linking technique that looks only at medians and does not take into account confidence intervals; it does not adjust for biases; and EPA applied its methodologies to years which were not part of the linking analysis. EPA must reevaluate and seek comment on any revised methodology before it can rely on that methodology to justify its SIP call proposal.

Finally, the proposal overstates the number of
areas where ozone air quality is of concern. EPA demands region-wide NOx reductions based on a claim that there are numerous areas throughout the targeted region that are not attaining the 1-hour and 8-hour ozone ambient standards. That is not so.

That is certainly not so for the 1-hour standard. As EPA itself demonstrated by lifting the 1-hour standard in most of the country, there are very few areas that now fail to meet the 1-hour standard.

Nor can EPA base its region-wide SIP call on the new 8-hour standard because there are no designated 8-hour nonattainment areas, not locally, not regionally. EPA says it will not designate any such areas before the year 2000, and under the Act, SIPs implementing the 8-hour standard are not due until three years later, in the year 2003.

EPA has tried to explain its use of the 8-hour standard by saying that even though the agency will not designate any 8-hour nonattainment areas before the year 2000 and will not ask states to revise in-state 8-hour nonattainment areas before 2003, EPA nevertheless has the authority to require individual states to take action before the year 2000 to address 8-hour nonattainment outside of their own boundaries.

Let me give an example of this. North Carolina
now has no areas designated nonattainment for either the 1-hour standard or the 8-hour standard. But let's assume that EPA later decides that Charlotte, North Carolina, has air quality that is not attaining the 8-hour standard.

EPA appears to be saying that until Charlotte is designated nonattainment for the 8-hour standard EPA will not require North Carolina to take any steps to revise its SIP to address 8-hour concerns with Charlotte. But under the terms of the proposed SIP call, EPA would require other states, like South Carolina, to revise their SIPs to address 8-hour concerns in Charlotte.

It is unthinkable that the Act would require South Carolina to revise its SIP to address air quality concerns in Charlotte, North Carolina, before the Act would require North Carolina to address those concerns in Charlotte. In fact, Congress did not do that, and no reasonable reading of the Act could lead to such an absurd result. That is what EPA's reading of the Act would require, and that is just one more reason why EPA's SIP call is illegal.

In closing, I would like to ask for an extension of the comment period so that when we get the additional data, which we assume will be coming soon -- the inventories, we understand, will be model-ready this week, so that actual modeling using the EPA inventory can start
now. We would like 120 days after all of the information is available for comment so we can comment on it all at one time.

Thank you.

MR. WILSON: Thank you.

Ms. Field, one question. Is it your view that we should work only off of the 1-hour standard at this stage, and after designating areas nonattainment for the 8-hour standard, then come back and redo the process if further transport reductions are required?

MS. FIELD: Yes, that's right. We keep mentioning poor North Carolina just because it's an example of one that has absolutely no 1-hour nonattainment problems, nor does it contribute significantly to 1-hour problems. They, of course, are going to be working on coming up with a plan to deal with the 8-hour standard if there are areas that aren't meeting it. I'm assuming other states will be looking at what they are doing with the 8-hour in coming up with their 1-hour plans, but they are not required, and under the program that EPA has come up with, they will not be required to come up with an 8-hour attainment program until 2003.

MR. WILSON: Thank you all for coming. We appreciate it.

The next group is Mr. Mike Menne, Mr. Stephen
MR. MENNE: Good afternoon. My name is Mike Menne of Ameren Corporation. I represent the operating companies of Union Electric and Central Illinois Power.

The standard SIP call is based, in large part, on the results stemming from the OTAG process. If EPA is to have any scientific basis for reducing transported ozone, it should begin by adopting the recommendation of OTAG. You have heard and will hear a lot today about how the proposed SIP call does not follow many of those recommendations, and I will not go into that further in my comments.

In addition to the OTAG recommendations, EPA suggests the proposed SIP call is based on the weight of evidence regarding the transport of ozone precursor emissions.

The air quality monitoring and BACT trajectory analyses cited in support of this weight of evidence argument did little more than prove that the wind blows into the northeast from the west during summertime eastern U.S. high pressure meteorological regimes. They also prove that ground-level air contaminants are carried along with these winds.

However, the complex photochemical transformations, diffusion and dispersion of a wide variety
of natural anthropogenic emissions which lead to ozone formation are ignored in these analyses. Thus little if any weight should be given to this evidence when it is being used to justify controls on emission sources hundreds of miles from the measured ozone concentrations.

Another area where EPA is requesting comments in the SIP call is with regard to the cost-effectiveness of NOX emission controls. In particular, the agency is using a dollars per ton cost removal comparison.

When dealing with ozone it is inappropriate to look at dollars per ton of NOX removed from a cost-effective perspective. This is because removing a ton of NOX does not always result in ozone improvements. In fact, the ozone disbenefit of certain NOX removal is well documented. It's simply not accurate to presume that controlling a ton of NOX will be effective at all in reducing ozone.

The appropriate metric is to examine the cost per part per billion of ozone reduced. This should be the only method used to compare control costs if you are really interested in comparing ozone benefits.

When looking at the small fraction of PECO's own concentrations reduced with the proposed SIP call program, the program by this metric is not at all cost-effective. If we are able to complete our subregional modeling analysis in
the time allowed to comment on this rulemaking, more
information will be submitted to clearly illustrate this
point.

The ozone modeling performed during the OTAG
process did not justify the NOx tonnage budgets proposed in
the SIP call. As frequently stated during the OTAG
proceedings, the OTAG modeling is not SIP quality.

We have been attempting to conduct regional ozone
modeling and have found that the emissions inventory, after
numerous refinements by EPA as recently as last week, still
contains many errors and problems.

EPA has indicated that modeling used in responding
to the SIP call must use this OTAG EPA emission inventory
and UAM-V modeling system. We therefore must also urge EPA
to extend the formal comment period to allow the use of this
information in our analyses. The emissions inventory
information is just now getting into a form that can be
used, and the comment period closes in just a few weeks.
This makes it virtually impossible to respond to the SIP
call with information that EPA is saying we must use to
respond in our comments.

We would suggest, if the point of the SIP call is
to take a significant number of tons out of the atmosphere
in the eastern U.S., then there is a better way to achieve
this goal. Union Electric Company, as has been mentioned here by Ken Colburn, has been among the leaders in the nation demonstrating that significant NOx reductions from coal-fire power plants can be achieved at a relatively low cost compared with chemical or ammonia treatment systems.

On this point, I would just like to add that one of the people on a panel this morning stated that he thought a 55 percent reduction is roughly equivalent to Title IV NOx controls. On the Union Electric system, Title IV regulations would have required level 3 and over air combustion controls on only three units on our system, with averaging.

Union Electric has spent $50 million in seven years attempting to get NOx emissions as low as possible on seven of our largest boilers. The performance that we are getting on these boilers, in our analysis, is that we are achieving NOx emission rates lower than any coal-fired power plant using this type of technology in the nation. Yet, still we are not achieving a 55 percent emission reduction. So I think the statement that 55 percent is relatively the same as Title IV is certainly inaccurate on our system. I think you will get a lot more NOx tons with a 55 percent reduction.

I would also say in response to Ken Colburn's
comments that we are achieving close to 0.15 on some of our units, that NOx is very different from SO2 control and other types of controls, and that it is very site specific. We are getting some great results on some of our large systems, but even on other units within our systems our engineers are telling us we can get nowhere close to those same kind of results. That's why the one size fits all is really inappropriate and results in some drastic costs which are not seen on just looking at one or two individual units.

In summary, Ameren Corporation believes that the EPA regulatory program to address air pollution problems should be based on the Clean Air Act and sound science. We believe that the proposed SIP call does neither. We have taken steps to significantly reduce our emissions and are willing to continue to do so provided these criteria are satisfied.

Thank you.

MR. WILSON: Thank you.

Mr. Fotis.

MR. FOTIS: My name is Stephen Fotis of Van Ness Feldman. Today I am here on behalf of Santee Cooper to present its views on the proposed NOx SIP call rule.

For your reference, Santee Cooper is the fourth largest non-federal public power system in the United
States, and Santee Cooper is committed to reducing NOx emissions from sources that significantly contribute to ozone nonattainment problems either in our local South Carolina communities or in downwind states. It is with this strong commitment to clean air that Santee Cooper presents its views this afternoon.

First, Santee Cooper believes that the SIP call proposal fails to demonstrate that South Carolina's emissions significantly contribute to the downwind nonattainment problems. One reason for this problem pertains to EPA's methodology for determining significant contribution.

Specifically, EPA is proposing to make a significant contribution finding based on the cumulative impacts of all upwind sources in a multistate subregion. Santee Cooper is concerned that EPA's approach makes no real attempt to document the relative contribution of each upwind state to the ozone transport problems.

Also, EPA's methodology appears to rely on a number of questionable modeling assumptions that may tend to overestimate the importance of each particular state's relative contribution. One example pertains to the assumed synergistic effect that arises from combining one state's emission reductions with those of several neighboring
Santee Cooper believes that as a result of these types of methodological problems EPA has failed to meet the significant contribution requirement established under the Act. This failure has important implications for OTAG borderline states such as South Carolina.

To help clarify this matter, Santee Cooper does plan to include in its written comments air quality modeling analyses that will show that South Carolina makes very minimal contribution to the ozone problems in downwind receptor areas. These analyses clearly demonstrate that South Carolina should not be subject to the SIP call in the first instance, and, two, that EPA's proposal to calculate South Carolina's NOx tonnage budget based on the 0.15 NOx rate for power plants is unjustifiable under these circumstances.

The second point I would like to mention is that Santee Cooper believes that the SIP call is overly broad. In particular, we question EPA's legal authority to issue a SIP call for the new 8-hour standard, for a number of reasons.

First, the new standard was in effect for only about a month prior to EPA finding that states' ozone implementation plans are deficient for that standard.
Two, that EPA will not designate any area as nonattainment for the new 8-hour standard until the year 2000.

Three, that states will not be required to develop any local air quality controls until 2003 for areas that are ultimately designated nonattainment for that new standard.

EPA's proposal thus has the practical effect of vaulting the 8-hour ozone transport control strategies ahead of the implementation of the transport strategies for the 1-hour standard and the local control strategies for the 8-hour standard. This is clearly not authorized under the Act and is inconsistent with the presidential directive issued last July.

In conclusion, Santee Cooper does appreciate the opportunity to present our views at this public hearing and looks forward to working with EPA and South Carolina in establishing our state's relative contribution to the ozone nonattainment problems in downwind states. Though we have a strong commitment to clean air, it is essential that EPA's ozone transport strategy be based on sound science and result in significant air quality improvements for meeting the 1-hour standard.

MR. WILSON: Thank you.

Mr. Wyman.
MR. WYMAN: Good afternoon, Mr. Wilson and members of the panel. My name is Bob Wyman. I'm speaking today on behalf of the newly formed alliance of electric utilities, labor and other organizations from within the 22-state region addressed by the proposed SIP call. We are the Alliance for Constructive Air Policy.

The current alliance membership is drawn from states in the Midwest, Mid-Atlantic, Great Lakes, and Southeast regions. We are currently consulting with key policymakers in these states to develop a framework that reflects the economic and environmental needs of different subregions and that guarantees timely NOx reductions.

As the name suggests, the Alliance for Constructive Air Policy supports the environmental goal of attaining applicable clean air standards, but believes firmly that EPA must choose the most constructive, cost-effective, and flexible means of achieving these goals. This is consistent with the many public statements by EPA officials and others in the administration that the agency is always looking for cheaper, smarter, better ways to achieve its environmental goals.

We do not believe that the proposed SIP call is compatible with this objective. While regional NOx controls have a role to play in state strategies to attain the ozone
standard, these controls should be designed to address the divergent air quality needs of the states in the region in a manner that is cost-effective and recognizes environmental and economic differences among subregions in the eastern United States. In principle, EPA acknowledges that cost-effectiveness is an important criterion, but part of any cost-effectiveness analysis must be a consideration of the relative effectiveness of reducing NOx emissions in different subregions in improving air quality in areas of concern.

The extensive modeling conducted during and after the OTAG process demonstrates that the further one gets from the area of concern, the less effective NOx emission reductions are in improving air quality. In other words, from the perspective of improving air quality in New England, one might have to reduce three or more tons from sources a couple of hundred miles away for every ton reduced in New England to achieve the same air quality benefit. But by presuming that all sources within a 22-state region should reduce NOx emissions to an equal degree, the proposal completely ignores the fact that not all tons are equal in improving air quality.

We believe that OTAG was on the right track, that further modeling can show us where the greatest reductions
should occur and where additional reductions would yield little if any air quality benefit and that a range of emission limits should be considered in developing a regional transport strategy. Taking the OTAG recommendations into account, the alliance has developed a proposal that is cheaper, smarter, better to address the transport and overall nonattainment problems.

ACAP proposes that EPA should revise its SIP call to include the follow two-stage approach:

1. For the subregions represented by ACAP's members, EPA should require an initial guaranteed emission reduction to a level that is the less stringent of a company-wide 55 percent reduction from 1990 levels or .35 pounds of NOx per million Btu of heat input. These initial reductions would be achieved by the summer of 2004.

2. By the year 2000, the states and EPA should complete additional refined modeling to evaluate both the need for additional reductions beyond the initial step and the relative air quality benefits associated with such reductions. Any such additional reductions would be achieved by the summer of the year 2007.

This two-step process assures prompt progress towards attainment but allows EPA and the states to tailor the most stringent reduction requirements to those areas, if
any, where further upwind reductions are determined to be more effective than local reductions. The proposal thus would significantly reduce the overall cost of the program while still achieving any appropriate transport-related benefits of regional NOx controls.

We think this is consistent with the guidance from Congress on ozone nonattainment contained in the 1990 Clean Air Amendments, which explicitly recognize that the stringency of state air quality programs should reflect the relative severity of ozone problems in different areas.

The potential value of a NOx control program based on differential subregional targets is implicitly recognized in your SIP call proposal. In our view, it is the most appropriate way to use scarce national resources. To ensure that this option remains viable given the agency's expeditious timetable, we believe that EPA must include it in its upcoming supplemental notice regarding a model trading rule. Including such an alternative approach in an SNPR was expressly recognized in your proposal on page 60,343.

If I could just comment briefly at the end here. I am concerned if you don't do that -- you've announced that you would -- that you would be precluded later on as a practical matter. So it's really very important, I think,
that you do that in your supplemental notice.

Two final quick comments. We support the call for an extended comment period for the reasons others have given you, and we hope given the many comments today on the wisdom of the two-tiered approach that we will have an opportunity to work with you and others towards developing that alternative.

Thank you.

MR. WILSON: Mr. Wyman, on that two-tiered approach, how did you come up with 55 percent and how does that fit the need for many areas to demonstrate attainment with the 1-hour ozone standard by 1999?

MR. WYMAN: This is consistent, of course, with what you heard this morning, I believe from the State of Pennsylvania, that it does represent a fair share. Because it is the portion of the two-step approach which is uniform, it was that level which we felt would be appropriate across the 22-state region as a start.

MR. WILSON: There is this issue of how that relates to what is required by Title IV. I don't know if you are prepared to address that now or for the record.

MR. WYMAN: I agree with Mike, who spoke earlier on this panel. Of course it depends on the individual circumstances of each utility, but in our experience 55
percent does provide a significant reduction for many of the utilities that are certainly part of our alliance.

MR. WILSON: It would be useful to get more details.

MR. WYMAN: We would be happy to provide additional information on that.

MR. SEITZ: The same question I asked earlier of Mr. Murphy, I believe. That percent reduction in Pennsylvania, I would like to know what level of attainment you believe that is going to produce in the nonattainment areas that have the 1999 date, if any.

MR. WYMAN: Our purpose on the 55 percent was to provide an appropriate floor that could be a uniform reduction, but that it would take further refined modeling to determine what additional reductions would be needed for either standard. We will be happy to give you that information.

MR. SEITZ: I would appreciate that. Even in the OTAG deliberations in the northern tier of this, I think they were looking at levels of ranges higher than that. They looked at a whole series of ranges, and that produced different results.

MR. WYMAN: You're talking about the 1-hour standard?
MR. SEITZ: With the 1-hour.

MR. WYMAN: I understand.

MR. McLEAN: Bob, just a clarification. The 55 percent and the .35, was that the lesser of those two?

MR. WYMAN: Yes, it's the less stringent of those.

MR. McLEAN: What's the baseline from which the 55 percent is taken? Fifty-five percent of what?

MR. WYMAN: We are supportive in concept of a growth-loaded 2007 baseline from which the reductions would occur. We still are working, and we need to consult with the states, on what the appropriate methodology is for determining appropriate growth factors. But our ultimate reduction would be from a 2007 growth-loaded baseline.

MR. McLEAN: That would be after Title IV is implemented. So it would be 55 percent below Title IV levels?

MR. WYMAN: No. The 55 percent number comes from the 1990 levels consistent with the numbers that OTAG was looking at. We agree that it's appropriate to convert those to 2007 growth-loaded factors so that at the end of the day whatever emission rates you would pick to set your cap would be relative to 2007 baseline. In terms of the 55 percent number, I think it is best for you to look at, just for comparison purposes, from the 1990 baseline that OTAG was
MR. WILSON: Howard.

MR. HOFFMAN: Mr. Menne, could you describe the regional or subregional modeling that you are doing?

MR. MENNE: We are looking at conducting a modeling analysis that extends basically from Ohio to Kansas and from Arkansas northward to the Great Lakes. It depends on timing whether or not we will be able to get done with this. We are trying to put in a 12-kilometer grid across that region. Much of the western part of that grid has not gone to that level. So we are trying to convert the emissions inventory data to that level.

We are trying to work with the State of Missouri to do this. They have concerns over St. Louis and Kansas City as well as Chicago, and those are the three areas that we are concentrating on with the modeling analysis.

At this point in time we are using a CaMx model and hope to be able to use the UAM-V model to validate or verify or compare those runs against, but we just don't have the time at this point to try to set up a licensing agreement with UAM-V in the time of the comment period.

MR. HOFFMAN: What is the receptor area that you are looking at?

MR. MENNE: There are a number of receptor areas.
They include the entire OTAG domain. We are looking at
receptors in the entire OTAG domain, but we are focusing
primarily on the Chicago area because that's where the
culpability back to our units has been most targeted.

MR. WILSON: Mr. Menne, you commented on the
success you've had at some facilities in getting NOx
reductions. If you could give us some more details in your
written comments. Also, you raised cautions about whether
those results were applicable to some of your other
facilities. If you could explain what the differences are,
it would be helpful to us.

MR. MENNE: I'd be happy to send that information.

MR. WILSON: Thank you. Thank you all. We
appreciate your coming.

The next group is, Ms. Karen Price, Mr. Mark Gray,
and Mr. David Flannery.

MS. PRICE: Good afternoon. My name is Karen
Price, and I'm president of the West Virginia Manufacturers'
Association, located in Charleston, West Virginia. Our
organization represents approximately 200 manufacturing
facilities in West Virginia which form the economic backbone
of our state.

Because many of these industries have combustion
processes in their plants, this proposed rulemaking to
greatly reduce NOx emissions from these facilities will have
a significant impact on our members. We are fondly referred
to as the non-utility point source category. Translated,
this means all of our chemical and plastic makers, coal prep
facilities with dryers, natural gas compressor stations,
kilns, furnaces, and other combustion sources, not just
boilers.

To tally the NOx tonnages mandated by the EPA
proposal, our state will have to reach deep into the ranks
of NOx emitters whether the stacks are short or tall,
whether the effect is theoretically real or simply imagined.
This means going to sources with a high cost for each ton of
NOx removed, and it will certainly sweep its scope into a
number of small businesses as defined by the federal
government.

EPA has failed to assess the impact of this
proposed rule on the small businesses which will be targeted
by attempting to dodge the Small Business Regulatory
Enforcement Fairness Act. As you well know, SBREFA requires
EPA to assess the potential impact of a proposed rule on
small business entities before a rule is proposed. Instead,
from the outset EPA decided that SBREFA does not apply to
this action since they are simply imposing budgets on the
states. This cavalier attitude ignores the fact that the
states would not have to impose limitations on any sources, including small sources, but for EPA's mandate to reduce.

We do not believe that Congress intended to allow that kind of interpretation by EPA. Accordingly, we hereby ask EPA to voluntarily withdraw the NOx SIP call, conduct a small business analysis, and repropose a rule which takes these concerns appropriately into account.

We also have serious concerns about the SIP call on other manufacturing sources in our state. According to EPA's budget calculations, it would be necessary for all our manufacturing sources of any size to greatly reduce emissions. We simply do not believe that this can be done either technologically or economically.

One size does not fit all. NOx controls on manufacturing sources, typically with short stacks, is necessarily a case-by-case matter.

We also believe that it is fundamentally unfair to ask our sources to make these large reductions in order to chase a 6 PPB improvement in the Northeast. These reductions in fact represent a greater reduction burden in our state than in the current nonattainment states. This is unacceptable.

If the basis of this rulemaking is assumed transport of ozone precursors, then any reductions
ultimately required should, in equity, be based upon comparable cost per tons removed, the distance the source is located from a nonattainment area, and the stack height of that source. EPA has never before made determinations of this sort based on entire geographic and political boundaries. In fact, we believe that the Clean Air Act does not allow this interpretation.

This OTAG modeling did not model the impact of sources just from West Virginia. EPA is grouping large areas of sources together in order to jump over the significant impact hurdle it knows it otherwise faces in trying to support this rule.

From a West Virginia perspective, the proposed budget amounts to asking our state to eliminate twice all the NOx emissions of our manufacturers, or all of the NOx emissions from our power plants, or three times the emissions from all of our automobiles. And our manufacturing community is facing a double whammy. As large consumers of electric power, we will be supporting the cost burden of any reductions imposed on the electric utilities.

In addition, manufacturers will be faced with the direct cost of reductions of NOx at their own facilities. As nonregulated entities, manufacturers will not be able to simply pass through those costs to their customers, as they
We believe that EPA has significantly overreached in this SIP call proposal. It is asking the states, little or no benefit to air quality in the Northeast. If these reductions are made, even EPA's own models do not areas, clogged with vehicles, will continue to violate the ozone standard, we believe.

compliance. Therefore, we respectfully dissent and ask that EPA go back to the drawing board and fashion a reasonable problems which may exist on a subregional basis, and in the meantime hold fire to the feet of the Northeast states to Thank you very much.

MR. WILSON: Thank you.

MR. GRAY: Mr. Wilson, thank you for having me here today. My name is Mark Gray. I'm manager of the here today to express my company's concern over the proposed SIP call.
American Electric Power representatives were very active participants in the OTAG process and have worked closely over the past few years with the states in which we operate to evaluate the nature of the ozone problem and take actions to address the issue.

For example, AEP installed NOx controls on our Amos plant near Charleston, West Virginia, in 1994, well ahead of the regulatory requirements under Title IV, in large part to assist the State of West Virginia in developing a successful attainment demonstration for Charleston.

Given this intensive and lengthy OTAG effort, the conclusions we draw after our review of the proposed SIP call can be summed up in two words: bad faith -- bad faith by the U.S. EPA, and bad faith by the Northeast states.

We say this, first and foremost, because the emission control levels of electric utility sources upon which EPA based the SIP call NOx budgets are in fundamental conflict with OTAG’s recommendations. That recommendation, arrived at after extensive ozone modeling, demonstrated that the nature of the ozone problem differs in different regions of the United States, not the one-size-fits-all approach taken by the proposed rule.

EPA has not abandoned the concept of
differentiated control levels for utility sources, but it

stringent of the range of the whole 22-state region covered
by the proposal. By adopting an extreme position on the
technically supported, EPA has also broken faith with the
OTAG participants on the science which guided the process.

transport was not a significant contributor to the
nonattainment in various regions, the need for the
obvious. The OTAG states expected at least an additional
year would be available during which more detailed modeling

The EPA has not allowed the states that time but
has instead unilaterally proposed an extreme control program
be disbenefits to Midwest airsheds, potentially worsening
the ozone level in some localized areas. And it is

would approve a plan that would harm constituents in his own
state to achieve a highly questionable improvement in the

EPA has also broken faith by accelerating the
timetable for implementation of controls. The OTAG states
considered various implementation schedules and focused on
the year of 2004 as an appropriate target. This target year
was based on sound understanding of the measures necessary
to select the appropriate control technology, schedule the
construction, and complete the implementation.

EPA itself, in announcing in July of last year the
plan for the 8-hour ozone standard, identified 2004 as a
target for implementation. We find it troubling that the
EPA only a few short months later proposed a control
deadline of September 2002, an illogical and unwarranted
step.

We are left to wonder whether EPA is in effect
granting the Northeast states' 126 petitions with the SIP
call proposal without due process.

Finally, we are concerned with the impact EPA's
proposal will have on the potential success of a NOx trading
program. OTAG recognized the economic value of trading and
that that could be brought to the ozone process.

AEP and the rest of the utility industry have
experienced some benefits with successful implementation of
EPA's SO2 allowance program. We have, however, learned a
few things about the SO2 program.

First, there should be a range of control options,
activity. Most importantly, there must be something to trade.

It will effectively be only one control option: selective catalytic reduction, and the limits of that technology will

It is essential that the states be given the time needed to develop control programs to achieve their own air to the OTAG airshed. This is particularly true now that the states will have to meet the new 8-hour standard.

alliance of utility companies and is prepared to work closely with our states and to achieve significant emission

and strategies that will attain the new ozone standard as well. We believe that such an alternative to EPA's proposal air at a much lower cost, and we ask the EPA to support this alliance in a constructive compromise to the SIP call.

MR. WILSON: Thank you.

Mr. Flannery.
MR. FLANNERY: Thank you, Mr. Wilson. Ladies and gentlemen, I am Dave Flannery. I represent the Midwest Ozone Group. It would be hard to imagine a regulatory initiative as ill-conceived in science, law and policy as the proposed SIP call that brings us to this hearing today. EPA's failure to follow the OTAG recommendations for additional refined modeling work, favoring instead a one-size-fits-all control strategy, defies all scientific logic and points clearly to significant defects in the proposal.

From among the myriad legal and policy concerns related to the proposed SIP call, it is most significant that the proposal has its greatest impact on those states that already have the best air in the nation. Pursuit by EPA of new and very restrictive control measures on the clean air states of the Midwest and Southeast in advance of requiring the dirty air states of the Northeast to regulate their own sources is particularly egregious.

Incredibly, EPA's proposed NOx SIP call does not have as its objective attainment of the ambient air quality standard for ozone, a clear legal defect. Indeed, EPA knows perfectly well that the emission reductions contemplated by the proposal will not have a significant effect on the serious and severe nonattainment areas of the Northeast.
That is, of course, because the noncompliance problems of the Northeast are local concerns that are in great part to regulate their own sources in favor of trying to find some way -- any way -- to shift responsibility and cost to

Consider for a moment the situation that exists in the Northeast in which the states of New Hampshire and Maine submit appropriate enhanced I/M programs at all. This is apparently related to a judgment on the part of the although required by law, are so politically unpopular as to cause those states to prefer to violate a mandatory of the voters.

Politically unpopular or not, enhanced inspection knows the significant ozone improvements that will result from the implementation of these and other mandatory however, elects to ignore the failure of the Northeast states to comply with these mandatory requirements and takes
necessarily be applied within the Northeast if the ozone air quality standard is to be achieved.

We have no doubt that states in the Northeast are experiencing air quality problems related to interstate transport of air pollutants. The air pollutants being transported, however, are not coming from the clean air states of the Midwest and South. To the contrary, the pollutants of concern are coming from the neighboring states of the Northeast, and it takes only an examination of statements of the Northeast states themselves to make that point.

Consider, for example, in the case of Maine the April 14, 1997, letter from Commissioner Sullivan to State Senator Carey in which Commissioner Sullivan says, "Massachusetts and New Hampshire are responsible for the majority of Maine's transport problem, and must further reduce their emissions if Maine is to meet Federal ozone air quality standards."

In the case of Massachusetts, consider the January 14, 1994, letter from Massachusetts Air Quality Control Director Barbara Kwetz to Mr. Seitz in which she raises a number of concerns about the movement of ozone precursors from the dirtiest areas of the Northeast to less dirty areas, stating:
"This is the case for the marginal and moderate downwind from Massachusetts, and for the serious nonattainment areas of Connecticut, New Hampshire, the severe nonattainment area of the New York metropolitan region, New Jersey and the rest of the Ozone Transport In the case of New Hampshire, an August 25, 1997, memo from Director Colburn to his legislative leadership has "All of the state's ozone violations over the last three years have occurred at the Rye Harbor monitoring emissions."

And a similar statement that I have included in my pointing to the City of New York and urban areas there as creating their highest ozone levels.

forth in detail in our written comments, we urge that EPA refrain from further development of its proposed SIP call in science to determine the nature and extent of emission
reductions that will assure attainment of the ozone ambient air quality standard without imposing unnecessary controls on sources that are not significantly contributing to that problem.

MR. WILSON: Thank you.

Mr. Gray, you mentioned that you thought the trading program wouldn't work very well because there would be only one control option. Yet, I think other testimony we heard this morning and our own analysis suggested that every unit didn't need selective catalytic reduction to meet the proposal. It's probably better for the record, but if you could submit some more analysis supporting your view that there is only one approach and that trading wouldn't work, it would be helpful.

MR. GRAY: We can do that.

MR. WILSON: Thank you.

MR. SEITZ: Two quick ones, one clarification, Ms. Price. You can submit for the record on this. I thought I heard you say that the cost of control in West Virginia would be higher than control in nonattainment states such as Pennsylvania. I'm not quite sure I understand that. You don't need to go into detail on that now, but if you could submit for the record a statement of that and the economic analysis of how you get there.
In addition, Mr. Flannery, I take it you are disagreeing with Commissioner Seif on the monitored data of the air quality being 94 percent of the 1-hour standard at the Ohio-Pennsylvania border.

MR. FLANNERY: Mr. Seitz, we are prepared to deal with Pennsylvania's issue. As you heard earlier today, the states of West Virginia, Ohio, and Kentucky are currently doing modeling focusing on Pittsburgh.

MR. SEITZ: Pennsylvania includes Philadelphia as well. You are saying Philadelphia is not part of that issue?

MR. FLANNERY: To the extent that Mr. Seif was suggesting that the boundary conditions related to Pennsylvania are somehow related to the Midwest, yes, I do disagree, but if he is talking instead about Pittsburgh, certainly those of us that are along the Ohio River Valley need to focus on Pittsburgh. We are prepared to do that.

MR. SEITZ: Thank you.

MR. WILSON: Thank you all very much for coming today.

The next group, Ms. Amy Wright, Mr. Ken Barrett, and Mr. Bryan Roosa.

If there is anybody here who wanted to testify today and hasn't let us know, if you would please check in
with the registration desk.

Ms. Wright.

MS. WRIGHT: Good afternoon. My name is Amy Wright. I'm the manager of environmental management and fuels procurement for the Dayton Power & Light Company. I'm here today as the chair of the Environmental Committee of the Ohio Electric Utility Institute, whose members include American Electric Power; Buckeye Power, Incorporated; the Cincinnati Gas & Electric Company of Cinergy Corporation; the Dayton Power & Light Company; and Ohio Valley Electric Corporation.

We have identified a number of substantive and procedural problems with the proposal that we would like to highlight and also note that the Clean Air Act does not authorize EPA to proceed in the manner that is set forth in the proposal.

While EPA has the authority pursuant to section 110(k) of the Act to issue a SIP call enforcing 110(d) of the Act, this authority must be implemented through the Interstate Transport Commission process spelled out in section 176(a) of the Act. EPA has not proceeded by way of this mechanism in the proposed rulemaking. It essentially ignores that the Act requires a state showing of SIP inadequacy rather than a general finding of inadequacy.
Finally, EPA proposed that each targeted state, including Ohio, impose a cap on NOx emissions despite the fact that the Act does not require that such a cap be used to address an alleged SIP deficiency.

As to EPA's discussion pertaining to the new 8-hour ozone standard, EPA has claimed there to be SIP deficiencies before the SIPs for that standard are required to be submitted. Key parts of EPA's analysis, for example the proposed method for determining through modeling which areas will fail to attain the 8-hour standard, are based on questionable modeling and statistical techniques that have not undergone any sort of peer review.

EPA overstates the number of areas where ozone air quality is of concern and has suggested that stringent emission reductions are necessary to resolve these problems. For example, EPA has called for emission reductions in upwind states with little or no problems to resolve transport problems in nonattainment areas in downwind states before those downwind states have actually fulfilled all the requirements of the Clean Air Act.

EPA further proposed a more stringent emission reduction level than that recommended by OTAG. EPA's SIP call ignores OTAG's recommendations that subregional modeling be completed before defining whether any, and if
so, what amounts of additional NOx reductions should occur.

EPA developed statewide budgets for NOx emissions and acknowledged later that the state-specific budgets, based on growth factors, as initially proposed were incorrect. EPA needs to provide an explanation as to why its budget numbers for some states are quite different than what was initially proposed in the OTAG recommendations.

EPA concludes that the cost of achieving enormous NOx reductions would be mitigated by the use of a NOx trading program but fails to recognize the proposed trading program cannot work unless there are excess tons of NOx to trade, and no excess tons of NOx will exist if the SIP call continues to demand that affected utility sources meet an average NOx emission rate of 0.15 pounds per million Btu.

EPA has not set forth its final approach to trading issues, and when it does, the approach will likely be very narrow, a basic approach for all states to follow, a cap and trade approach. As I previously stated, nothing in the Act requires a cap to be used to address an alleged SIP deficiency.

In addition to previously mentioned substantive issues, we have a number of concerns with the procedural aspects of the SIP call. EPA has indicated its intent to publish the final SIP call by November 30, 1998. It has
established only a 120-day comment period ending March 9, 1998. However, you have not fully articulated in the SIP call proposal essential parts. These parts include the air quality analysis predicting the air quality impacts of the EPA SIP proposal, the final state NOx budget numbers, and sufficient information pertaining to EPA's views on the types of trading programs that would be allowed for implementing the agency's proposal.

In closing, it cannot be emphasized enough that the proposed SIP call is contrary to the recommendations of OTAG.

First, EPA's SIP call proposes an emission reduction level far more stringent than the recommendations of OTAG.

Second, it stipulates that there be only one emission rate for electric power plants even though OTAG analysis indicates, and EPA representatives concurred, that the same level of reductions probably would not be appropriate for all states covered by the SIP call.

Finally, EPA's proposal ignores OTAG's recommendations that further subregional modeling be completed prior to defining whether any and, if so, where and what amounts of additional NOx reductions should occur.

Ohio Electric Utility Institute Environmental
Committee member companies strongly encourage U.S. EPA to reevaluate the SIP call proposal and incorporate OTAG recommendations as well as the comments provided today.

MR. WILSON: Thank you.

Mr. Barrett.

MR. BARRETT: Good afternoon. My name is Ken Barrett. I'm representing the Alabama Department of Environmental Management. I appreciate this opportunity to comment on EPA's proposed regional ozone SIP call.

Alabama will follow up these general comments with more detailed comments before the March 9th deadline.

I will briefly go over about six of the concerns and comments that Alabama has concerning this proposed SIP call.

First, we really do not feel that EPA has allowed sufficient time for states to comment on this SIP call due to the type and amount of additional modeling that will be necessary for individual states to adequately assess their potential contribution to any region or any other state.

OTAG grouped states and analyzed the ozone transport, but further analysis that would indicate individual state contribution is essential in determining what is a fair and equitable control for the states that might be required or even needed.
In Alabama we need to find out how much we affect Atlanta, Tennessee, maybe Mississippi, and how much they affect us. Then you could have justification for controls.

We also believe that EPA does not allow enough time for states to respond to the SIP call once it is finalized. Twelve months is a very short time frame to have in place regulations that would be sufficient for a SIP call of this magnitude. For some states it would seem an impossibility due to their process. So this mechanism seems set to fail.

Alabama, with our fairly simple procedures, would be hard-pressed to meet this deadline if everything flowed smoothly.

Third point. From what I understand, EPA does not allow its staff sufficient time to act on the required SIPs. If the time allotted to the EPA regional staff is only a couple of months, then again I see the mechanism being set up to fail or at least delayed.

Fourth. It is evident in the findings of OTAG that transport in the northern tier of the country was more prevalent than in the southern tier of the country where ozone problems tend to be more localized. However, when EPA issued the proposed SIP call, it set forth identical control levels in all the 22 states, including states in the South,
even though the proposal acknowledges that transport is less
in the South.

Fifth point. Only the upper two-thirds of Alabama
was included in the OTAG process and modeling. Yet EPA
included the entire state in the proposed SIP call. The
reasoning seemed to be for ease of administration, but this
is a weak justification when you are talking about very
costly controls on utilities and other large combustion
sources in an area such as Mobile, Alabama. To my
knowledge, EPA has not examined any data that includes
emissions from the southern third of Alabama.

My last comment involves a workshop that we held
in Alabama concerning the proposed EPA SIP call. At that
workshop an EPA official representative stated that Alabama
does not affect the Northeast with regard to the transport
of ozone. That is what Alabama believes. We may affect our
neighboring states and they may affect us, but how much is
yet to be determined.

With that, I conclude my remarks.

MR. WILSON: Thank you very much.

Mr. Roosa.

MR. ROOSA: My name is Bryan Roosa, and I'm the
deputy director of the State of Michigan Washington office.
I'm here pinch-hitting today for our state's Department of
Environmental Quality, with testimony provided by our Air Quality Division.

I appreciate the opportunity to share with you Michigan's deep concern over EPA's proposal to impose a NOx budget on the State of Michigan. This proposal would force requirements for drastic reductions in emissions in order to mitigate high ozone levels in the Northeast states.

We believe that EPA's proposal is premature and is not supportable by the OTAG modeling conducted to date. Overall, the modeling runs conducted as part of the OTAG process have been useful as a screening tool. However, additional subregional modeling must be conducted to finally determine the level of controls.

The proposed SIP call would presumably require the states to reduce emissions of oxides of nitrogen by a specific target amount before the additional modeling is completed. This is not acceptable.

The impact of specific states on any particular nonattainment problem has yet to be identified. Targets selected by EPA at this point are based on overly simplistic interpretation of the modeling done to date, and they depart from the recommendations of OTAG which called for additional subregional modeling and urged consideration of a range of emission reduction targets. Therefore, picking target
reductions at this point cannot be justified. Instead, EPA should consider defining the ranges of reductions that should be used to initialize the subregional modeling with a goal of determining the final emission reduction target.

Michigan and other states made presentations during the OTAG process which clearly showed that transport from the Midwest was not as predominant as EPA had originally theorized. Our modeling is showing that between 70 and 80 percent of the ozone observed in the Northeast is due to precursors emitted in that region. In fact, our modeling shows that zeroing out Michigan emissions will not produce widespread air quality benefits for downwind areas exceeding 124 parts per billion.

This modeling also indicates there is no significant benefit from level 3 controls over level 1 controls. The capital cost for one utility alone to meet the level 3 emission reduction requirement may exceed $400 million. Yet EPA has proceeded with the proposed NOx budget for Michigan that is equivalent to the OTAG level 3 controls.

Equally as important, we have discovered there is a likelihood of ozone increases as a result of NOx reductions. This likelihood is critical in both west and southeast Michigan. West Michigan was granted a section
182(f) NOx waiver after modeling demonstrated ozone
disbenefits in the Lake Michigan region from reduction in
NOx emissions. Between 1992 and 1995, extensive study of
ozone pollution in southeast Michigan determined that local
NOx controls there would result in ozone disbenefits as
well.

For all these reasons, we strongly suggest that
the comment period on the proposed SIP call be extended
several months. The additional modeling and the extensive
tactical analysis provided as part of our written comments
speak to the need for an extension. An extension is
critical to allow for an informed and serious review of the
data.

Further, EPA has not provided its emission
inventories upon which subregional modeling should be used.
Without the inventories, it is impossible to conduct the
appropriate tactical analysis. Even if the data was
provided at this point, there isn't enough time to do the
work by March 9.

Our department is astounded that EPA has proceeded
with a proposed cap on NOx emissions for Michigan without a
quality assured emissions inventory. The available
inventory may have been adequate for general modeling, but
it's hardly adequate for establishing a statewide cap.
We are also concerned with the agency's cost analysis which relies on extreme control technology rather than determining if the emissions from the affected state are having a significant impact on ozone transport. The use of a consistent cost-per-ton strategy rather than an approach of minimizing cost based on changes in ozone concentrations downwind is fiscally irresponsible and will hamper the use of emissions trading.

Since the proposed stringent emission limits cannot be justified from an air quality perspective, cost-effective economic considerations must be the driving force behind any SIP call. While some may feel that a "leveling of the playing field" is a good enough reason for these limits, this is not allowable under the Clean Air Act.

In Michigan we are committed to reduce air pollution and protect the health of all our citizens. We believe we can do that best by taking the time to gather the data necessary to develop a fair and cost-effective program rather than using punitive, broad-brush solutions.

Thank you.

MR. WILSON: Thank you.

MR. HOFFMAN: Mr. Roosa, what additional modeling is Michigan doing?

MR. ROOSA: I have a limited knowledge and I would
like to defer that to our quality folks. However, I understand it is CaMx modeling. I'm sure that that will be provided more extensively in our written comments.

MR. SEITZ: That's as far as you will take it?

MR. ROOSA: That is absolutely as far as I dare take it.

MR. HOFFMAN: Mr. Barrett, you discussed the time period for developing state regs.

MR. BARRETT: Right.

MR. HOFFMAN: In your written comments perhaps you could be more specific about what the process is and the timetable for each of the steps in the process and why 12 months is tight for you folks.

MR. BARRETT: Like I said, in Alabama we would have sufficient time in 12 months unless we had a lot of comments and things like that. It would push us, but there are some other states in the Southeast that have a legislative process that could take a couple years, according to when the legislature meets, and it would almost be impossible for them to meet 12 months. That's what I was alluding to.

MR. WILSON: Thank you all very much for coming today.

The next panel, Ms. Elizabeth Lanier, Mr. Quin
Shea, and Mr. David Long, please.

MS. LANIER:  I'm Liz Lanier. I'm a vice president/chief of staff for Cinergy Corp. Cinergy, as I think most of you know, is a diversified energy company supplying electricity and gas to customers in Ohio, Indiana, Kentucky, and in the U.K.

I'm grateful to be here today and grateful that we have the opportunity to make comments on the SIP call, and I look forward to working constructively with our states, with federal policymakers, and with other interested parties on a sensible and cost-effective alternative to the SIP call. We believe it's an alternative that achieves comparable air quality benefits.

As many of you know, there are few companies that face a larger impact from the proposed SIP than Cinergy, a company that generates 98 percent of its 11,000 megawatts by burning coal. We are a company that takes our environmental commitments seriously, and we believe that reducing NOx is good business.

We have put on 87 percent of our system low NOx burners and overfire air since 1990. We have spent more than $100 million attributable exclusively to reduction of NOx levels and have achieved 27 percent reductions from our 1990 levels.
We also have under way a boiler optimization program which will be installed system-wide.

Despite these reductions and these considerable capital expenditures, Cinergy now faces the onerous additional capital and O&M burdens that are called for by the SIP, which we believe are based on inadequate legal, scientific and technical justification. We could have simply said no to the SIP and followed legal battles.

Instead, Cinergy has spent the last several months consulting, as many of you all know, with the EPA, with our states, and working with other utilities, labor and other organizations towards the development of an alliance to propose and support an alternative. The alternative is a 2-step phased plan that would guarantee additional air quality benefits to our region in a timely and cost-effective manner.

As a founding member of the Alliance for Constructive Air Policy, represented in earlier comments by Bob Wyman and endorsed in numerous other comments by alliance members, Cinergy is proud to be a supporter of the ACAP proposal which we believe will positively impact nonattainment areas that modeling indicates are most affected by our regional power plant emissions.

We supported OTAG, and we acknowledge the OTAG
modeling suggests that our power plant emissions play a role in the formation of ozone in nonattainment areas such as Cincinnati and Louisville.

Cinergy believes that the ACAP 2-step phased alternative is consistent with OTAG, and particularly consistent with three OTAG recommendations.

One is the finding that emission reductions in and around nonattainment areas are the most beneficial and that benefits decrease rapidly with distance.

The second is that further reductions should be based on subregional modeling.

Finally, that reductions should be determined on the basis of a range and not a uniform rate.

The EPA proposed uniform .15 rate clearly goes beyond the OTAG proposal. It asserts that air quality problems in the Northeast are significantly impacted by midwestern power plant emissions, and that .15 is necessary to address this impact. This is a position we reject simply because it is not supported by OTAG or other physical data.

In the moments I have left before my time runs out I would like to focus on one aspect of the ACAP proposal which Bob mentioned briefly but didn't elaborate on, and that is the need for a clean air investment fund that is part of our proposal.
As you all know, President Clinton's initiative on NAAQS announced in July emphasized the need for a clean air investment fund to ensure a reasonable cost of compliance for proposed new air quality standards. We believe that the flexibility that an investment fund provides should be endorsed and embraced as part of the NOx proposal. We believe that where companies would face excessive cost for compliance they should have the alternative to invest in a fund which could be used to pay for reductions made in other sectors and to fund research in advanced control technologies.

We look forward to fleshing out this proposal and the other parts of the ACAP proposal as we go forward and look forward to working with all of those people in the room who like-mindedly want to work towards a constructive alternative solution.

Thank you.

MR. WILSON: Thank you.

Mr. Shea.

MR. SHEA: Good afternoon. My name is Quin Shea, and I am the director of environmental affairs for the National Mining Association based here in Washington, D.C. NMA represents over 400 companies in the mining industry domestically. We intend to submit detailed comments prior
to March 9th but in the interim would like to bring to your attention a few key concerns.

We also urge that you listen closely to the comments raised by our colleagues in the rail, mining, utility and labor sectors.

National Mining is a member of ACAP and endorses comments made beforehand by Mr. Wyman. We also warmly applaud comments by several of the states, particularly Secretary Seif from the State of Pennsylvania, and urge EPA to look closely at what Pennsylvania is suggesting, as Pennsylvania in many respects is the focus point of where the states are.

As a threshold matter, NMA is extremely disappointed, though not necessarily surprised, with the logistics underlying this rulemaking. On the one hand, EPA's proposal includes no justification for a finding of a SIP inadequacy. Indeed, such a finding currently is impossible given that the proposal includes no modeling demonstrating what air quality impacts purportedly would result from the proposal.

Yet EPA has acknowledged publicly that the November 7, 1997, proposal is incomplete and will need to be supplemented through yet another proposal that will include, among other things, actual rulemaking language, revised
budget numbers, air quality modeling analyses, and a proposed NOx cap and trade program. Unfortunately, this supplemental proposal will not be published until after March 9, thereby prohibiting meaningful public comment. This is both unfair and illegal.

NMA requests that the public comment period for the proposed rule be extended for a period of 120 days after the supplemental proposal is published, or rather, after the entire proposal is publicly available, to allow thoughtful and comprehensive comment on all aspects of the SIP call proposal.

EPA has concluded that it may resort to the 110(k)(5) SIP call procedure under the Act in the instant case because state plans for the 22 targeted states do not sufficiently address in-state emission activities that adversely impact downwind states. EPA's conclusion, however, is inapposite to the 1990 amendments and seems to disregard sections 176(a) and 184.

The recently concluded Ozone Transport Assessment Group process was a 2-year effort involving 37 eastern states intended to determine the nature and causes of interstate ozone transport and potential violations of the 1-hour standard in certain areas. By a vote of 31 to 5, a number of key recommendations were reached, in pertinent
part, that a range of utility NOx controls in the fine grid
states be allowed for, ranging between Title IV and either
existing 120 part per billion ozone standard; that control
measures would be determined and implemented by the states;
be carried out in accordance with the Clean Air Act.

A couple of observations.

clearly that states must have the opportunity to conduct
additional local and subregional modeling and air quality
and timing of controls. The current proposal and
implementation schedule do not provide for this critical

Second, the OTAG process was geared to the 1-hour
ozone standard. Yet EPA's proposal suggests that a SIP call
new 8-hour standard.

I don't want to go into the reasons that my
regarding use of 1-hour versus 8-hour, depending on whether
it's an in-state problem or a downwind problem, but I urge
NMA believes that such a strange reading of the Act, as contemplated by EPA, was not in fact contemplated by Congress and cannot be supported legally or as a matter of common sense.

Having persuaded states to invest two years in OTAG to understand how ozone transport impacts their efforts to meet the 1-hour standard, EPA now is coercing states under the SIP call rulemaking to participate in a cap and trade program that may or may not keep them out of nonattainment. NMA reserves judgment on the specifics of the cap and trade program until we have seen the details.

We will be providing a significant amount of written comment on the expected economic and job loss impacts of this rulemaking. You've asked for that several times, and we will do that.

I would like to note, though, in response to something said earlier, NMA believes that what we would call maximum drawing board control technology, not available control technology, is not available and will not meet the .15 standard, much less something below. Until we have seen widespread availability of field tested and cost-effective SCR in major units, it doesn't exist.

In closing, for those of us in the mining industry to understand the importance of coal utilization, we are now
faced with the latest in a long series of extreme regulatory
actions reflecting EPA's desire to reduce the use of coal in
the United States. The SIP call proposal is neither
scientifically nor economically justified, nor is it
conducive to maintaining a sound national energy policy.
EPA's agenda is being driven by policy objectives, which is
unfortunate, as this proposal poses a substantial threat to
industries that mine, transport and utilize coal, and to
scores of future potentially unemployed miners.

Thank you.

MR. WILSON: Thank you.

MR. LONG: Good afternoon. My name is David Long, and I'm representing the Indiana Electric Association. The Indiana Electric Association represents the five investor owned electric utilities operating in the State of Indiana. The IEA endorses the testimony of UARG, ACAP and MOG which was presented earlier this afternoon.

The IEA appreciates this opportunity to speak at this hearing. Our member utilities are committed to doing our part to aid in attaining ambient air quality standards that protect the health and welfare of the citizens of Indiana and the surrounding states where our emissions have a meaningful and significant and controllable impact on air quality. Unfortunately, this SIP call as proposed by EPA
will not result in the measurable results claimed in the Federal Register notice proposing this action.

The IEA is undertaking photochemical modeling to further refine OTAG's modeling results in an effort to understand the areas where changes in our emissions could reasonably aid in correcting nonattainment conditions. Unfortunately, U.S. EPA has hampered our efforts by failing to make available to the general public a modeling inventory which was the basis for the control strategy proposed in the SIP call. Until such time as U.S. EPA makes an inventory available and allows at least six months for detailed analysis to occur, the comment period on this action cannot be closed without resulting in a severe disservice to the public.

Even though the lack of an EPA SIP call inventory has hampered our efforts, we have conducted a set of photochemical modeling runs that we believe are quite instructive on the minor air quality benefits the SIP call will bring. This is despite U.S. EPA's assertions in the SIP call that implementing the proposed emission reduction strategy would eliminate all but a few of the 1-hour and projected 8-hour nonattainment areas in the United States.

We have modeled the 1991 and 1995 OTAG episodes, used the 2007 SIMS inventory developed during the OTAG
process; then reduced nitrogen oxide emissions by 85 percent on utility and 70 percent on other large point sources in the State of Indiana.

My first overhead shows our base case, which is an 8-hour plot, much as some of the claims EPA is making that this is necessary for the 8-hour standard. This is our 8-hour base case for July 21 from the 1991 OTAG episode, which is the worst day for transport from Indiana from this episode.

What I would like to point out here is the large areas, even after Title IV and the other Clean Air Act, that are still in nonattainment.

My second overhead shows the difference whenever we impose our control strategy in the State of Indiana. Note that there is little impact beyond about 150 miles from the State of Indiana, with the bulk of the changes coming in the immediate area of the emission reductions.

Our analysis further demonstrates that when applied to the 1991 OTAG episode this strategy will not result in attainment in any county which was found to be in exceedance in the base case. Our 1-hour plots from this episode, which we will not be showing due to time, show similar results.

We performed the same analysis for the 1995 OTAG
episode. The results for July 14th, which was the worst day from that episode for Indiana transport, are attached to my testimony. Briefly, the results from that modeling demonstrate the same thing that we see here: limited transport, with not a great deal of improvement and no counties moving into attainment.

Our work to date demonstrates that while emission reductions from large point sources will be a necessary component of ozone control strategy development in the OTAG region, the uniform and arbitrary reductions proposed by the SIP call will not result in many nonattainment areas reaching attainment without additional local control measures. In the case of reductions from the State of Indiana, no areas will move into attainment without additional local control measures.

As we continue to evaluate our work, we are becoming more and more convinced that the correct approach is to follow OTAG's recommendation to allow adequate time to perform subregional modeling to determine the appropriate geographic reductions. Therefore, we encourage U.S. EPA to withdraw the SIP call and give the states the time necessary to work individually and collectively as appropriate to perform the subregional modeling recommended by OTAG to determine the appropriate state-specific mix of emission
reductions needed to correct the nonattainment problems in
the OTAG region.

Thank you for your time and attention.

MR. WILSON: Thank you very much.

Ms. Lanier, do you have something that explains
the proposal that you all are putting forward? I've heard
pieces of it, but I haven't seen it.

MS. LANIER: Yes. We'll provide you with a copy
of the press release that went out yesterday that details,
and we have a one-page summary as well, which we would be
happy to provide.

MR. WILSON: If you could also perhaps submit for
the record your sense of how that 55 percent, or .35, as I
understand it, reduction on the first step would compare to
the Title IV program for your plants.

MS. LANIER: We have that for Cinergy. We'll have
to collect it from the other alliance members. We have not
quantified for all the alliance members the incremental.

MR. WILSON: Do you know it off hand for Cinergy?

MS. LANIER: No. I know that we have those data.

I don't have them.

MR. WILSON: If we could get those for Cinergy,
that would be helpful.

MR. SEITZ: Mr. Long, the model results presented
for the record, was that UAM? What model was that?

MR. LONG: That was CAMx. We have been unable to obtain a license from SAI for their propriety UAM-V model as of this date.

MR. SEITZ: Could you submit for the record all the background as to what the model was, what the inventory was? It was very unclear to me what that was.

MR. LONG: Yes. We will be submitting that as part of our comments.

MR. HOFFMAN: Sir, that shows a localized disbenefit in the Chicago area?

MR. LONG: Yes, sir, it does.

MR. HOFFMAN: But some benefits further to the east?

MR. LONG: Very limited, though.

MR. WILSON: Thank you all for coming today.

The last two witnesses today are Mr. Dharmarajan and Ms. Susan Gander.

MR. DHARMARAJAN: Good afternoon, Mr. Wilson. My name is Dharmarajan, and I am representing Central & Southwest Corporation, which is a Dallas, Texas based electric utility holding company.

Before I read my piece, I have an admission to make. I was tempted to bring along a flag of Texas to wave
before this august body, and even the smallest flag was too
big to fit in the confines of my carry-on.

[Laughter.]

MR. SEITZ: Thank you for your comments.

[Laughter.]

MR. DHARMARAJAN: Do I get two minutes off the
clock there?

[Laughter.]

MR. DHARMARAJAN: Getting down to brass tacks, the
focus of my comments will be limited to the four Southwest
states of Arkansas, Louisiana, Oklahoma, and Texas, which
are listed under the OTAG coarse grid classification and
where my company provides electric service to an estimated
population of 4.2 million people, covering approximately
152,000 square miles. Our generating capability of
14,000-plus megawatts includes a broad mix of fuels.

In this proposed rulemaking the EPA has recognized
OTAG's recommendations for excluding coarse grid states from
control measures. We applaud this. However, EPA has also
suggested that it may include some or all of the 15 coarse
grid states in the final SIP call rule if it appears that
these states are significant contributors to nonattainment
in the fine grid area. EPA should base its decision on
comments received as well as any additional modeling and
technical analysis.

Central & Southwest believes very strongly that EPA should not revisit the Southwest states' NOx reduction needs in the context of this rulemaking. The EPA should stay its course and follow the recommendations of OTAG in the final rulemaking.

Let me spend a few minutes to recap the spirit of the recommendations of OTAG and to also advance some additional points to support our sentiments.

During the OTAG deliberations in the 1995-1997 time frame, Central & Southwest coordinated the workings of a coalition of four state agencies and industries. This coalition spent an enormous amount of time and resources to perform an independent review and to develop technical cost and model analysis. The results demonstrated why the Southwest coarse grid states should not be included in any OTAG recommended control measures. Our findings were endorsed by OTAG.

On page 10 of the October 1997 Executive Report, in its findings and recommendations to the EPA, the policy group states:

"The recommendations adopted by the policy group recognized that the OTAG analysis demonstrated that transport impacts of the coarse grid areas on the fine grid
are minimal and therefore do not include the coarse grid areas for recommended control measures other than those that would be nationally applied."

Additionally, I quote from page 53 of the OTAG Executive Summary Report:

"The coarse grid states, which should be exempt from OTAG controls, will, in cooperation with EPA, periodically review their emissions and the impact of increases on downwind nonattainment areas, and, as appropriate, take necessary steps to reduce such impacts, including appropriate control measures."

I believe these are compelling statements.

I would also like to submit the following for your consideration.

1. I do not believe that distances have shrunk nor emissions increased since last October when OTAG made these recommendations to the EPA.

2. NOx emission rates from the Southwest utilities are still among the lowest in the U.S. and continue to trend downwards due to voluntary measures.

3. We continue to have a greenbelt of attainment areas which separate the Southwest from other regions.

4. Oklahoma and Arkansas have no nonattainment areas under the recently released EPA 1-hour standard
revocation proposal.

5. Our four state agencies are actively addressing issues relative to their local problems and are still continuing the regional cooperative efforts with industry.

I believe these are strong attestations to our position on the issue and adequate proxies for any further consideration for requiring unwarranted reductions in NOx from our coarse grid states in the context of this proposed rulemaking.

I would like to raise a few other issues which are contextual.

MR. WILSON: Your time is up. So if you could summarize.

MR. DHARMARAJAN: Do I get some time back?

[Laughter.]

MR. WILSON: No. We'll put your whole statement in the record.

MR. DHARMARAJAN: Thank you.

MR. WILSON: Thank you.

Ms. Gander.

MS. GANDER: Good afternoon. I'm Sue Gander with the Center for Clean Air Policy. Thank you the opportunity to be here today to discuss the importance of maintaining a
strong ozone transport SIP call.

The Center for Clean Air Policy is a nonprofit research and environmental advocacy organization founded in 1985 by a bipartisan group of state governors in their quest to break the gridlock surrounding the acid rain issue. As you know, we have also been active in the OTAG process.

Then, and now, the center has held true to one core philosophy, that economic and environmental progress can go hand in hand and market-based solutions are our best hope for real sustainable progress. In the spirit of that philosophy, I would like to emphasize the key points I'll make today.

1. The preponderance of air quality modeling indicates that we need stringent reductions in NOx emissions across the OTAG region in order to address the ozone problem.

2. EPA has the statutory to extend controls to clean areas and require reductions in transport of ozone precursors.

3. Reductions from electric generators represent the most cost-effective control options available and should be the main target. However, other sectors also have a role to play.

4. A broad-based cap and trade program provides
the most cost-effective way to reach our reductions goals.

OTAG's modeling indicated that deep cuts in NOx emissions across the NOx region are necessary to reduce both homegrown and transported ozone that contribute to our nonattainment problems.

We would like to commend EPA for acting on its authority under the Clean Air Act and taking the groundbreaking step of requiring states that are currently considered clean to control their emissions due to their adverse impact on downwind states. This unprecedented action is critical to our ability to address the ozone issue. Moreover, we commend EPA in recognizing the need to set stringent NOx emission limits in accordance with the upper end of the range of controls recommended by OTAG.

EPA estimates that the utility reductions associated with their SIP call will cost an average of $1,700 per ton. In comparison, most of the reductions from other sectors would cost significantly more. Not only are utility controls cost-effective, they will also have minimal impact on electricity rates.

According to EPA's regulatory analysis, the annual cost for the electricity sector is approximately $1.5 billion per year. This amounts to just 1.3 percent of electricity revenues for the 22 affected OTAG states. This
suggests a minimal impact on electricity prices, equivalent to increases on the order of 75 cents per month for a typical household bill. Even if estimated costs are closer to the higher OTAG cost estimates that were developed with the higher utility base assumptions, this would still amount to less than 3 percent of total annual revenues for the industry and minimal rate impacts.

In addition, the ongoing restructuring of the electricity industry will lead to savings of up to $40 billion per year according to recent estimates by the Energy Information Administration. These savings could completely offset the potential impact of additional utility NOx controls on electricity prices.

These economics make a strong case for states to follow EPA's guidance on target reductions in the utility sector. That being said, it is important to maintain progress on addressing NOx emissions from other sectors, especially mobile sources, so that all states under the SIP call are making equivalent levels of effort on all fronts.

In terms of implementing EPA's proposed rule, cap and trade programs represent the most cost-effective way. The cost-effectiveness of emissions cap and trade programs has been successfully demonstrated through the national SO2 trading program as well as other regional programs.
Since its earliest work in shaping the acid rain provisions, the center has been a strong supporter of market-based approaches, and we continue to endorse this approach under the SIP call.

OTAG conducted extensive modeling to estimate the cost of several versions of a cap and trade program and indicated that substantial savings can be achieved. For instance, at a .15 pound per million Btu level of control, moving from rate-based controls to a cap and trade program lowers costs by from 19 percent to nearly 40 percent per ton of NOx reduced. This decrease is not insignificant. It can amount to as much as $900 million each year.

In addition, a cap-based system provides greater certainty that the applicable emissions budget will be achieved.

Finally, EPA's modeling indicates that there will indeed be a healthy market for NOx credits. According to the modeling of the cap and trade system, less than one-half of all coal plants will need to install SCR. The remaining may opt for a combination of less aggressive controls and NOx credits.

The key to taking full advantage of these opportunities is encouragement and clear direction from EPA to the states on the development of compatible trading
programs.

One point for EPA to consider as it develops a final rule is the possible implications on electricity reliability that may be associated with the proposed 2002 deadline. EPA needs to make certain that the deadlines are reasonable in terms of reliability concerns with the options of phasing in or opting for a 2004 time frame. However, let me make clear this should not be associated with decreasing the stringency of the rule.

In closing, I would like to reiterate our strong support for the following key points contained in EPA's proposed rule.

First, that stringent reductions in NOx emissions are needed across the eastern half of the United States;

That EPA has the statutory authority to extend controls to clean areas;

That reductions from electric generators should be targeted as the most cost-effective source;

That emissions cap and trade programs offer the most cost-effective way to reach our goals.

Thank you.

MR. WILSON: Thank you very much. Thank you both for coming today. We appreciate it.

That concludes the witnesses that we had scheduled
for today. As I mentioned earlier, we will begin tomorrow
morning at nine o'clock.

[Whereupon, at 3:10 p.m., the hearing was
recessed, to reconvene at 9:00 a.m., Wednesday, February 4,
1998.]