

1 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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4

PUBLIC HEARING ON

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OZONE TRANSPORT SIP CALL

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Washington Plaza Hotel

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10 Thomas Circle, N.W.

9

Washington, D.C.

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Tuesday, February 3, 1998

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

14

MEMBERS PRESENT:

15

DICK WILSON, OAR

16

JOHN SEITZ, OAQPS

17

PAUL STOLPMAN, OAP

18

BRIAN MCLEAN, OAP

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HOWARD HOFFMAN, OGC

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TOM HELMS, OAQPS

21

KIMBER SCAVO, OAQPS

22

LYDIA WEGMAN, OAQPS

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BILL BAKER, Region 2

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MIKE SKLAR, OMS

1 JOE TIKVART, OAQPS

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P R O C E E D I N G S

[9:15 a.m.]

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2
3 MR. WILSON: Good morning. Thank you all for
4 coming out today to attend the EPA public hearing on the
5 proposed ozone transport rule.

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

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

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

22 For many years scientists, meteorologist and air
23 quality managers have recognized that air pollution is
24 carried by the wind easily across the states' borders. We

1 know that emissions from upwind sources can adversely affect
2 the air quality in downwind communities. Many states have
3 found it difficult to demonstrate attainment of the National
4 Ambient Air Quality Standards due to the transport of ozone
5 and its precursors.

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

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

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

23 EPA's proposed ozone transport rule, also known as
24 the NOx SIP call proposal, seeks to reduce the interstate

1 transport of ground-level ozone pollution in 22 eastern
2 states and the District of Columbia.

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

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

19 This proposal is a centerpiece of that strategy.
20 If put into effect, this strategy will enable the vast
21 majority of cities to meet both the current and new, updated
22 ozone standards without imposing additional new local
23 pollution controls or measures.

24 EPA is proposing to require that states revise

1 their air quality strategies to meet specific budgets for
2 nitrogen oxides. However, the proposed strategy does not
3 mandate which sources must reduce pollution to meet the
4 budget. States will have the flexibility to meet the
5 pollution reduction targets by reducing emissions from the
6 sources they choose.

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

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

19 The matter of interstate transport, as I mentioned
20 earlier, has been taken seriously by a number of states. In
21 addition, in August of 1997 Connecticut, Maine,
22 Massachusetts, New Hampshire, New York, Rhode Island,
23 Pennsylvania, and Vermont all filed petitions with EPA,
24 citing section 126 of the Clean Air Act related to

1 interstate pollution abatement. The petitioners have asked
 2 EPA to make a finding that utilities and other sources of
 3 NOx exacerbate ozone problems in the northeastern states.
 4 All the petitions target sources in the Midwest. Some of
 5 the petitions target additional sources in the South,
 6 Southeast, and Northeast.

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

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

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

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

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

24 Howard Hoffman of our Office of General Counsel.

1 Tom Helms of our Office of Air Quality Planning
2 and Standards.

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

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

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

22 On this table and also on the witness table there
23 is a little light system to help you keep on schedule. When
24 you start speaking a green light will come on; a yellow

1 light will come on when you have about a minute left; and
2 then a red light will come when your time is up.

3 We have overhead and slide projectors if anybody
4 needs them.

5 We are planning to take testimony through about
6 11:30 this morning and then break for lunch and come back at
7 1:00. Our guess is we'll end about 3:30 this afternoon.
8 We'll see. Hopefully before the rain and snow arrive here
9 in D.C.

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

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

22 One other thing for the witnesses. When you begin
23 your statement, if you could identify yourself and your
24 affiliation for the record, we would appreciate that.

1 With that, we will start with the first three
2 witnesses, Mr. Michael Wax, Mr. Peter Hamlin, and Mr. Danny
3 Herrin.

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

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

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

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

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

1 SCR and SNCR.

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

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

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

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

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

24 I'm not here today to suggest that every boiler

1 should install SCR and SNCR. What we are trying to say is
2 that there are multiple options available and every source
3 will either be able to find an appropriate cost-effective
4 technology or under a cap and trade scheme will be able to
5 buy allowances, and that the average cost under a cap and
6 trade scheme to meet the limits that EPA has proposed will
7 be well below the \$1,650 to \$1,700 per ton cost proposed by
8 EPA.

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

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

19 Finally, a related concern, that installation of
20 NOx controls will disrupt the power supply of the U.S., is
21 unfounded. Because the installation of SCR and SNCR systems
22 doesn't normally require extended outages, most or all of
23 the work requiring boiler shutdowns can be done during plant
24 outages.

1 Now moving to my second point. We support EPA's
2 suggestion of phasing in compliance with the SIP call
3 limits, whether implicitly by providing a mechanism for
4 rewarding early reductions or explicitly by setting an
5 intermediate NOx reduction target for the 2001 ozone season.
6 A phase-in will provide some payback for those who put on
7 controls early to accommodate outage schedules or for other
8 reasons, will help us capture environmental benefits early
9 for little or no incremental cost, and also give an
10 indication in terms of ozone levels in the 2001 and 2002
11 seasons that the SIP call targets have been set at an
12 appropriate level.

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

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

17 MR. WILSON: Thank you.

18 Mr. Hamlin.

19 MR. HAMLIN: My name is Pete Hamlin and I'm chief
20 of the Air Quality Bureau for the Iowa Department of Natural
21 Resources. I'm here today to speak to the impacts of the
22 current rulemaking on Iowa and the four other Northwest
23 states of Minnesota, North Dakota, South Dakota, and
24 Nebraska. These Northwest states are all OTAG states that

1 are not subject to further controls in this rulemaking as
2 proposed.

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

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

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

24 EPA should resist suggestions to revisit the

1 status of the 15 states excluded from this proposal. This
2 issue has been discussed in great detail during the OTAG
3 process and it has been the subject of significant data
4 assessment efforts. There is little or no likelihood that
5 credible data can be presented during the time period of
6 this rulemaking that could justify a reassessment of these
7 states.

8 The appropriate time for formal review of the
9 status of these 15 states is the planned reassessment in
10 2007. This will allow time to determine the effectiveness
11 of controls in the 22 states having the overwhelming impact
12 on public health and allow time for assessment tools to
13 mature to a point where they are more apt to be able to deal
14 with the smaller impacts than these 15 states might have
15 while also better addressing those additional controls that
16 are more likely needed in the 22 states already identified.

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

24 Iowa, together with the other northwestern states,

1 as appropriate, will continue to analyze the situation, and
2 we intend to have additional analyses available by the end
3 of the comment period.

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

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

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

24 The only valid cost-effectiveness criteria would

1 be one based on cost per microgram of impact. To do
2 otherwise would result in a less effective overall strategy
3 with either a lesser chance of success in eliminating
4 existing violations of public health standards or the
5 unjustifiable imposition of unnecessary, ineffective and
6 inordinately expensive controls on remote sources.

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

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

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

21 Thank you.

22 MR. WILSON: Thank you.

23 Mr. Herrin.

24 MR. HERRIN: Good morning. My name is Danny

1 Herrin. I'm manager of clean air compliance at the Southern
2 Company. My summary statement provides comments and
3 recommendations on the proposed SIP call, and I would like
4 to relate most of my comments to the South.

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

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

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

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

22 Significantly, EPA has also ignored one of the
23 most important criteria in OTAG's goal; that is, to select a
24 cost-effective strategy to reduce ozone.

1 In addition, EPA has ignored significant
2 differences in ozone transport in the southern tier of the
3 OTAG domain versus the northern tier by applying a
4 one-size-fits-all approach. A decade of data confirm that
5 the majority of ozone exceedances in southeastern cities are
6 homegrown, with little impact from long-range transport. An
7 analysis of the scale of influence also suggests that the
8 transport distances in the Southeast are generally near or
9 less than 100 miles.

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

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

20 As EPA said, the administrative burden on these is
21 one of the reasons why we are saying this needs to be done,
22 but that administrative burden at most would be minimal.
23 Our analyses show that just Southern Company sources that
24 are below the fine grid line in the states of Alabama and

1 Georgia would cost at least \$140 million in capital and \$6
2 million in annual operation and maintenance. That's a lot
3 of administrative burden.

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

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

21 In summary, the EPA proposed rules ignore the OTAG
22 science and recommendations relative to transport distances
23 in the Southeast and the lack of benefits of further NOx
24 controls in Alabama and Georgia relative to other ozone

1 nonattainment areas. EPA has arbitrarily included the
2 entire states of Alabama and Georgia because of unfounded
3 assumptions on additional benefits and because it perceives
4 that there will be an administrative burden on these states.

5 Finally, EPA has, without analysis or good
6 judgment, assumed that the massive control requirements
7 necessary to meet the state budgets are necessary and
8 achievable within the deadlines.

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

14 Thank you.

15 MR. WILSON: Thank you.

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

1 MR. HERRIN: Sure.

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

7 MR. HERRIN: We'll definitely do that.

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

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

19 I think the problem with the whole analysis is
20 that nobody has evaluated these existing sources for
21 retrofit of this technology. We've got many sources that
22 will have difficulty providing this technology, and I think
23 there is evidence to say that won't take a whole lot longer
24 than what people think it will take.

1 MR. SEITZ: But in light of the differences, for
2 the record your comments will specifically address that
3 issue?

4 MR. HERRIN: Sure.

5 MR. HAMLIN: That's correct.

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

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

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

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

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

19 MR. BRADLEY: Good morning. My name is Michael
20 Bradley, the director of the Ozone Attainment Coalition,
21 members of which include ten electric generating companies
22 in the Northeast as well as environmental advocacy
23 organizations that are state based, national based and
24 regional based.

1 What I would like to do today is focus on two
2 primary areas. One is the weight of evidence that EPA has
3 used as the basis for the regulatory action, as well as the
4 use of the NOx budget for electric generating facilities to
5 mitigate the regional transport.

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

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

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

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

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

1 Midwest and into Canada.

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

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

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

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

23 Among the control recommendations developed by
24 OTAG is the control of large electric generating sources to

1 levels of 85 percent. Coalition members such as Northeast
2 Utilities, PECO, PSE&G, Atlantic Electric, United
3 Illuminating, and others have demonstrated the ability to
4 reduce emissions at \$1,000 per ton or less. These control
5 options include combustion modifications, SNCR, SCR, fuel
6 switching, and others.

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

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

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

18 Market based emission trading.

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

21 Before I go into these issues, I also want to
22 stress the point that the coalition also supports EPA doing
23 its part of the bargain, which is implementing the
24 strategies on non-road area sources and motor vehicles that

1 will be important to achieve the goal.

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

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

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

19 MR. WILSON: Thank you.

20 Mr. Wallach.

21 MR. WALLACH: I want to apologize at the outset.
22 I don't know which of my three sons to blame my voice on,
23 but I'm sure it's one of them. In any event, I'm sure a lot
24 of you lived through the flu also.

1 My name is Paul Wallach. I'm here today on behalf
2 of the New England Council, which is the nation's oldest
3 regional business organization. It covers, obviously by its
4 name, the six states up in New England. I've served as a
5 member of the council's board of directors for over a dozen
6 years and now serve as chairman of the council's Environment
7 Committee. I'm also a senior partner with the law firm of
8 Hale and Dorr.

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

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

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

23 I would like to begin by stating that the members
24 of the council and the region as a whole have a demonstrated

1 commitment to protection of the environment and public
2 health and safety. Our 6-state region has worked actively
3 with EPA and the various state environmental agencies to
4 ensure that industry is an equal partner with government and
5 citizens to improve air quality.

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

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

18 The resulting problem is twofold.

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

22 The second is that it puts New England in a
23 situation where it is out of attainment with federal
24 standards and in fact is unable to achieve those standards.

1 This, of course, has serious implications for New England
2 and its citizens and also unfairly results in sanctions and
3 even tighter emission control requirements.

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

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

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

21 New England businesses and consumers have spent
22 several billion dollars to address their own emissions. We
23 do not, unfortunately, control the practices in other parts
24 of the country. Only EPA action to require substantial

1 emission reductions by the states in these upwind areas will
2 adequately address the problem of transported pollution.

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

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

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

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

1 reductions at the source.

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

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

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

24 MR. WILSON: Thank you.

1 Mr. Trisko.

2 MR. TRISKO: Thank you, Mr. Wilson.

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

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

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

24 Our interests here today are the same. We are

1 very aware of the risk of additional job losses resulting
2 from new utility NOx control requirements exceeding those
3 required by Title I and Title IV of the 1990 Clean Air Act
4 Amendments. The UMWA supports cost-effective reductions of
5 ozone precursor emissions from power plants and other
6 sources that will produce public health benefits without
7 sacrificing its members' jobs. We support the phased
8 approach to emission reductions that will be advanced here
9 today by the Alliance for Constructive Air Policy calling
10 for an initial 55 percent reduction of utility NOx emissions
11 similar to Phase II of the Ozone Transport Commission's MOU.

12 EPA's proposed limits on coal-fired power plant
13 emissions based on a uniform rate limit of 0.15 pounds of
14 NOx per million Btu should be revised substantially. EPA
15 should give states adequate time to complete the subregional
16 modeling called for by OTAG. States also must have the
17 discretion OTAG recommended in setting new emission
18 limitations for power plants within a range of Title IV
19 controls and an 85 percent reduction.

20 States in the Midwest and the South should have
21 the same benefit that states in the Northeast have had
22 through regional ozone transport commissions to resolve
23 their regional concerns about ozone transport. We strongly
24 encourage states in these regions to take collective action

1 in response to this rulemaking. Working together, states
2 need to devise truly cost-effective approaches to emission
3 controls and to complete the necessary modeling to determine
4 the appropriate allocation of emission reductions across all
5 source categories.

6 EPA here is imposing an impossible burden of proof
7 on states to disprove the magnitude of their alleged
8 contribution to ozone problems in other states without
9 providing states sufficient time even to complete the
10 modeling explicitly recommended by OTAG. This said, it is
11 clear from OTAG's modeling that no conceivable level of
12 emission reduction from coal-fired power plants or other
13 sources in upwind areas would allow the most serious ozone
14 nonattainment areas to demonstrate attainment with the
15 1-hour ozone standard.

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

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

1 area.

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

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

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

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

22 5. Unattainable Deadline.

23 6. A lack of cost-effectiveness.

24 The statement that we have submitted contains more

1 detailed remarks.

2 Thank you very much.

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

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

10 MR. BRADLEY: We are supporting the design of a
11 cap and trade program that promotes incentives for early
12 reductions. We are not supporting the phased control
13 approach per se. We want the controls in place by May 1,
14 2003. We want all the regulations adopted by September
15 2002.

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

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

19 MR. SEITZ: Thank you.

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

24 MR. TRISKO: No, Mr. Seitz. Our detailed

1 statement explains that. Our concept is very similar to
2 what the Commonwealth of Pennsylvania proposed in its
3 section 126 petition, that the fair share that Pennsylvania
4 is committed to, Phase II of the NOx MOU, which in the
5 western portion of Pennsylvania and New York is a 55 percent
6 reduction, apply to the northern portion of the fine grid
7 region, and that subsequent to the imposition of those
8 controls that a determination would be made respecting any
9 follow-on controls, and that necessarily would include
10 consideration of emission reductions for more than just the
11 utility sector.

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

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

16 MR. SEITZ: Thank you.

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

21 MR. TRISKO: No, Paul. The statement was to the
22 effect that the UMWA has lost thousands of jobs as a
23 consequence of fuel switching under the SO2 control
24 provisions of Title IV. We are concerned that if the

1 electric utility industry in the context of the current
2 atmosphere of restructuring is subjected to a multibillion
3 dollar per year capital investment requirement for SCR
4 controls that a large number of older and smaller plants
5 will simply be taken off line rather than retrofitted with
6 SCR or other controls.

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

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

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

17 First, it is clear that nitrogen oxide controls in
18 states outside the ozone transport region are necessary.
19 This need was convincingly documented during the past three
20 years when the Pittsburgh area violated the National Ambient
21 Air Quality Standards. Ozone concentrations at our
22 Ohio/West Virginia border measured ozone coming into our
23 state at levels up to 94 percent of the 1-hour standard and
24 exceeding the new 8-hour standard.

1 Clearly, Pennsylvania cannot protect the health of
2 its citizens without substantial reductions of the pollution
3 coming into our state. We want all states responsible for
4 and impacted by air pollution -- and Pennsylvania is in both
5 those categories -- to do their fair share to address this
6 issue.

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

13 As to the fair share issue, I think the last eight
14 years have seen significant improvement in our scientific
15 understanding of the formation, transport and effect of
16 ground-level ozone. The Clean Air Act of 1990 set up the
17 Ozone Transport Commission, which has dealt very
18 successfully with the issue over the years. It also
19 commissioned the National Academy of Sciences study, and as
20 a result of these and other actions it has become fairly
21 clear that ozone's impact on the Northeast cannot be
22 addressed without the help of others. Recently, the OTAG
23 group, very ably chaired by Mary Gade of Illinois, added to
24 that series of arguments.

1 The work of these groups made clear what was
2 intuitively obvious. It told us which way the wind blows
3 and proved that nitrogen oxides do play a major role in the
4 formation and transport of ozone.

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

10 We also adopted NOx Phase II rules, consistent
11 with OTC recommendations. These rules require reductions of
12 55 to 65 percent of NOx emissions from 1990 levels through a
13 market-based cap and trade program.

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

22 That leads me to the challenge that I have in
23 mind. In 1995, and once again when we filed our 126
24 petition with our seven sister states, Governor Ridge called

1 for a uniform market-based nitrogen oxides cap and trade
2 program for the Midwest and South consistent with the one
3 already in place in our state. We chaired the working group
4 at OTAG on this subject and advocated that approach, and we
5 are very pleased that EPA has now recognized its merits and
6 is developing a supplemental rulemaking model cap and trade
7 program. We urge our fellow states to consider it
8 carefully.

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

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

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

1 nutrients from air deposition.

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

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

10 MR. WILSON: Thank you.

11 Mr. Dupuis.

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

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

21 It was our understanding that EPA was to base its
22 SIP call on the recommendations made by OTAG. However,
23 EPA's proposal is inconsistent with the OTAG recommendations
24 in a number of respects.

1 The uniform level of very stringent controls EPA
2 has assumed for large stationary sources in calculating its
3 proposed budgets is not justified. OTAG modeling clearly
4 indicated that a one-size-fits-all strategy is not
5 appropriate and that ozone benefits resulting from NOx
6 reductions diminish with distance. Accordingly, OTAG
7 recommended a range of controls and that the states be
8 allowed up to 12 months to perform additional subregional
9 modeling.

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

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

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

24 EPA's narrow focus on NOx reductions from large

1 point sources, while ignoring other important source sectors
2 in the calculation of its NOx budgets, is misdirected.
3 Additional subregional modeling is needed to determine what
4 sources, including mobile and area sources, are impacting
5 downwind nonattainment areas and what levels of control are
6 needed to address these impacts.

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

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

23 EPA's grouping of states to demonstrate SIP
24 inadequacies is inconsistent with the Clean Air Act, and its

1 attempted linkage of zero-out modeling analyses with state
2 total NOx emissions to estimate state-by-state culpability
3 is overly simplistic and ignores the complex relationships
4 between precursor emissions and ozone formation, which, by
5 the way, include VOCs as well as NOx.

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

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

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

24 Another issue of concern is whether the required

1 equipment installations can be achieved by the year 2002 and
2 whether the required technology can be installed without
3 serious disruptions to the electricity supply in the eastern
4 United States. A phased approach toward implementation over
5 a more sensible time period will be more feasible.

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

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

20 MR. WILSON: Thank you.

21 Mr. Daniel.

22 MR. DANIEL: Thank you. My name is John M.
23 Daniel, Jr., director of technical support for the
24 Department of Environmental Quality in the Commonwealth of

1 Virginia. I am pleased to have the opportunity to make
2 these comments.

3 It is our opinion that these SIP calls are
4 improper or inconsistent with the Clean Air Act because EPA
5 has not done the detailed state-by-state culpability
6 analysis envisioned by sections 110(a)(2)(D)(i)(1) and
7 110(k)(5).

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

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

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

24 At the same time, EPA was defending their action

1 in litigation from New York, Pennsylvania and Vermont and
2 granting NOx waivers to four upwind states, Illinois,
3 Indiana, Michigan, and Wisconsin, because modeling evidence
4 showed that additional NOx emission reductions would not
5 contribute to attainment of the ozone air quality standards.
6 The U.S. Court of Appeals for the Seventh Circuit recently
7 sided with EPA on this lawsuit.

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

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

24 Absent nonattainment problems in the South and the

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

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

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

20 Earlier we wrote to EPA and requested an extension
21 of the comment period due to the inability of states and
22 point sources to retrieve the detailed emission inventory
23 that EPA is using as a basis for this SIP call. We
24 reiterate that extension request here.

1 Thank you for the opportunity to present our
2 views. More detailed written comments will be submitted
3 before the end of the comment period.

4 MR. WILSON: Thank you very much.

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

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

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

12 MR. DANIEL: Sure. Be glad to.

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

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

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

22 MR. DANIEL: From the time we get permission to go
23 forward to develop a regulation it takes a minimum of one
24 year if you are lucky and don't have any road blocks along

1 the way, but the state administrative procedures drag it out
2 at least 18 months in most cases. There are instances where
3 it has been even longer than that.

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

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

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

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

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

1 be great first steps.

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

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

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

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

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

24 MR. PARKS: Good morning. I'm David Parks,

1 speaking on behalf of the Baltimore Gas and Electric Company
2 (BGE). I will comment today on two main issues.

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

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

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

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

21 EPA has proposed that the emission rate of 0.15
22 pounds per million Btu be applied to utility boilers
23 throughout the affected 22 states and the District of
24 Columbia. This is more stringent than OTAG's most stringent

1 level and totally ignores OTAG's recommendation of a range
2 of controls. Additionally, the EPA's proposed
3 one-size-fits-all rate ignores the OTAG acknowledgment that
4 transport differs in different areas of the country.

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

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

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

21 The unprecedented OTAG process brought together
22 states, industry, and the environmental community to produce
23 the results described above. This technical analysis was
24 conducted in cooperation with, and under the scrutiny of,

1 the EPA. Throughout the 2-year OTAG process the decisions
2 of 37 state environmental commissioners, including final
3 recommendations, were based on this technical analysis. I
4 believe states expected to see a SIP call based on OTAG
5 numbers, OTAG results, and OTAG recommendations. I know
6 Maryland did.

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

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

15 On the second issue, we need to see how these
16 inconsistencies in the SIP call affect the State of
17 Maryland. OTAG's calculation for a utility NOx reduction of
18 the less stringent of 85 percent or an emissions rate of
19 0.15 pounds per million Btu provided Maryland with a 2007
20 ozone season budget of 20,195 NOx tons. EPA's SIP call
21 calculation for the same budget period leaves Maryland with
22 only 11,364 NOx tons. This is 44 percent less than OTAG
23 calculated. On January 9 the EPA revised Maryland's budget
24 to 12,971 tons, which is still 36 percent less than OTAG

1 calculated.

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

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

11 Let's compare the EPA's SIP call budget of 12,971
12 tons to the OTC Phase III budget of 15,523 tons. To address
13 only transported ozone, the EPA is proposing that Maryland
14 utilities reduce emissions 25 percent more than they had
15 planned to reduce under Phase III of the MOU to attain the
16 1-hour standard. Since transported ozone is only part of
17 the total problem, EPA's SIP call proposal for Maryland is
18 illogical and philosophically incorrect. BGE urges the EPA
19 to rectify these inconsistencies specific to Maryland and
20 the inconsistencies with OTAG's recommendations.

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

24 MR. WILSON: Thank you very much.

1 Mr. Rice.

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

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

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

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

1 nonattainment.

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

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

15 For that matter, EPA hasn't even identified the
16 8-hour nonattainment areas and doesn't even intend to until
17 the year 2000. Under EPA's scheme, states will be required
18 to revise their SIPs for yet to be identified 8-hour
19 nonattainment areas in other states all before they are
20 required to complete SIP revisions for 8-hour nonattainment
21 areas in their own states.

22 But EPA has found it can do a lot when it starts
23 with the end in mind. For example, EPA can propose a SIP
24 call when it hasn't even done the necessary modeling. EPA

1 can issue a proposal and at the same time admit that the
2 proposal is incomplete and will be supplemented after the
3 close of the comment period on this proposal.

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

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

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

24 When it's all said and done, EPA's proposal does

1 not even begin to get the existing 1-hour nonattainment
2 areas into attainment, but that apparently is not EPA's
3 goal.

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

10 Thank you.

11 MR. WILSON: Thank you.

12 Mr. Bessette.

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

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

22 [Overhead]

23 MR. BESSETTE: The proposed NOx SIP call is for
24 ozone transport, not a state and national air quality

1 standard. If we are considering ozone transport only, OTAG
2 is probably the foundation upon which the best information
3 was generated. It's the most comprehensive study ever. EPA
4 indicated it would take this stuff into account in the
5 overall process of generating the SIP information.

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

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

17 In the process of generating the ozone concessions
18 industrials were looked at on a case-by-case basis. Beyond
19 the utilities, one size does not fit all. We have size
20 boilers that range far in excess of anything that the
21 utilities have; different fuels, different sizes, different
22 operating characteristics. One size does not fit all. Yet
23 we conceded for the ozone budget process that they take one
24 number. So the NOx SIP call was based on one number for

1 expediency so you didn't have to run hundreds of thousands
2 of different NOx numbers to come up with a budget that EPA
3 would use based on the fact that we use detailed modeling at
4 a later time to determine what the long-range transport was.

5 Some of the things that we agreed to were weight
6 of evidence on coming up with a case by case or coming up
7 with the final NOx SIP call, looking at a basis that said
8 industrials would pay the same as utilities as far as what
9 the actual end results would be.

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

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

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

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

21 Non-utility point sources contribute very, very
22 little to long-range transport. Stack height is extremely
23 important with regard to what actually happens. It's
24 important that this be given fair consideration.

1 Any budget agreed to by the states should reflect
2 or be responsive to the actual transported emissions. That
3 means fine grid; that means fine scale. In some cases
4 individual plant modeling is necessary for a state to come
5 up with what their true budget should be.

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

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

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

19 Thanks.

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

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

24 MR. WILSON: Mr. Johnston, good morning.

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

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

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

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

1 opposed to pollution controls.

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

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

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

24 Enacting a rule in West Virginia requires an

1 agency to determine the economic impact of the rule on the
2 state and requires an estimate of the cost to the regulated
3 community and for the agency to administer the rule. EPA,
4 by not conducting the SBREFA analysis, has shifted the
5 entire burden of analysis to a state agency without
6 providing even minimal guidelines of the cost impact to
7 small business.

8 The SIP call proposal is a historical precedent
9 under the Clean Air Act in that, to the best of our staff's
10 knowledge, it is the first SIP call to ever involve
11 mitigation of nonattainment rather than, as called for under
12 the Clean Air Act, demonstration of attainment and
13 maintenance of the NAAQS. Until the 1990 amendments, EPA
14 could only issue a SIP call for the purpose of requiring a
15 state to demonstrate attainment and maintenance of the NAAQS
16 in nonattainment areas. Even the 1990 amendments used the
17 word "mitigation" in the context of section 176A and 184 to
18 refer only to those states in a specified ozone transport
19 region. West Virginia is not in an ozone transport region,
20 and EPA's SIP call does not result from the section 176A or
21 184 processes. We therefore are concerned that the SIP call
22 as proposed exceeds EPA's authority.

23 We urge that EPA significantly revise its proposed
24 SIP call to address these and other concerns that will be

1 set forth in our written comments. Thank you for the
2 opportunity to appear this morning.

3 MR. WILSON: Thank you.

4 Mr. Murphy.

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

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

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

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

24 Finally, OTAG recommended the range of utility NOx

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

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

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

21 Conforming to the requirements of Pennsylvania's
22 section 126 petition is significant since the state would
23 obviously be most impacted from any upwind non-OTR states.
24 In fact, recently completed modeling studies for

1 southwestern Pennsylvania indicated that no more than a 55
2 percent reduction would be required from local adjacent
3 upwind areas in order to achieve and maintain compliance
4 with the current 1-hour ozone standard.

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

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

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

21 The problem with the EPA methodology is that it
22 doesn't account for the projected growth between 1996 and
23 2000. For example, Allegheny questions the relatively low
24 growth rate of 5 percent for the State of West Virginia.

1 Based on the IPM results, West Virginia is projected to
2 experience a 37 percent increase between actual 1996 heat
3 input and IPM projected 2000 heat input. However, between
4 2000 and 2010, IPM projects only a 4.7 increase. By using
5 the lower growth rate projected between 2000 and 2010, EPA
6 prorates only a 5.1 percent increase between 1996 and 2007,
7 which completely ignores the projected 37 percent growth
8 between 1996 and 2000.

9 The EPA could eliminate this inconsistency by
10 prorating the 1996-2007 growth factor using the projected
11 growth between actual 1996 and IPM 2010 and eliminating the
12 use of the 2000 projections. Using this method, the West
13 Virginia straight growth factor would be a more reasonable
14 34 percent.

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

21 Thank you.

22 MR. WILSON: Thank you.

23 MS. BECK: Hello. My name is Kathy Beck and I'm
24 here offering a statement on behalf of Steve Roberts, who is

1 the president of the West Virginia Chamber of Commerce, here
2 to comment on EPA's failure to comply with the Small
3 Business Regulatory Enforcement Fairness Act of 1996. We
4 support clean air just as we support a fair allocation of
5 clean air burdens. But we also support the principle that
6 no agency should be above the law when pursuing that goal.

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

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

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

24 In 1996, business bankruptcies increased by 3.5

1 percent; business failures rose by 2.4 percent.

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

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

19 During both the initial and the final regulatory
20 flexibility analyses, SBREFA requires an agency to provide
21 information about the impact of the proposed regulation on
22 small businesses. These analyses are required to ensure
23 that the agency fully considers alternatives for small
24 businesses that would minimize the undue compliance burdens.

1 If the agency determines that alternatives are not
2 acceptable, SBREFA requires the agency to inform small
3 businesses of its reasons and why each one of the
4 alternatives was rejected.

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

17 EPA has disregarded these protections for small
18 businesses by certifying that SBREFA does not apply. This
19 certification was not based on analysis of the proposal's
20 potential impacts on small businesses, many of which can be
21 major sources under current rules. Nor did it reflect an
22 analysis of likely impacts if states are unwilling or unable
23 to meet their reduction budgets by focusing on very large
24 combustion sources.

1 Rather, EPA has ignored its responsibility under
2 SBREFA by trying to separate the effect of this regulation
3 on the states from the impact of the regulation on small and
4 other businesses. EPA in effect says SBREFA does not apply
5 because no entities are being regulated. Yet it says states
6 are simply being told to regulate sources under severe
7 sanctions if they do not promptly comply. This exercise and
8 the legal semantics clearly is contrary to the intent that
9 Congress had in mind when it developed SBREFA.

10 It is implausible to say that this regulation will
11 not have a huge, let alone significant, economic impact on
12 small businesses in West Virginia. Under the SIP call, West
13 Virginia is subject to greater burdens than any of the other
14 21 states identified. Overall, West Virginia faces NOx
15 reductions of 44 percent, and in some cases certain
16 categories of sources would be required to reduce in excess
17 of 85 percent.

18 This heavy burden imposed on West Virginia is
19 exactly the type of agency activity for which SBREFA is
20 necessary. To avoid potentially severe sanctions under the
21 Clean Air Act, West Virginia will soon have to begin
22 developing a revised SIP without any EPA direction to
23 evaluate impacts on small entities or EPA guidance on
24 acceptable ways to identify or reduce impact on small

1 entities. Without such EPA direction, the states will be
2 loath to pursue mitigation that EPA might later disapprove.
3 Moreover, because SBREFA was not followed at the proposal
4 stage, it will never be applied to the reductions proposed
5 by EPA.

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

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

22 We therefore urge EPA to suspend and defer further
23 action on the SIP call pending completion by EPA of all
24 steps necessary to satisfy the requirements of SBREFA. At

1 that point a supplementary proposal could cure the current
2 defects without EPA and the states losing additional time
3 and resources that would be sacrificed if EPA sticks to its
4 current position.

5 Thank you.

6 MR. WILSON: Thank you.

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

15 MR. JOHNSTON: Certainly.

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

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

22 MR. SEITZ: You're saying that the only obligation
23 is to southwestern Pennsylvania. When you look at 55
24 percent reduction, would you address your comments on

1 transport into Philadelphia within the Commonwealth of
2 Pennsylvania?

3 MR. MURPHY: Certainly.

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

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

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

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

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

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

1 8-hour standard approved last summer.

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

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

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

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

21 At a minimum, the 22 states proposed for coverage
22 must participate in the program to ensure a significant
23 reduction of ozone and precursor transport into the eastern
24 United States.

1 During the May to September ozone season a cap on
2 total nitrogen oxide emissions from source categories in the
3 region proposed for the coverage is necessary to achieve the
4 desired environmental benefit.

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

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

16 We believe it will be most appropriate to set
17 state budgets based on an average of the two highest ozone
18 season state heat input totals between the years 1995 and
19 1997 to reduce any potential inequities that might exist
20 from unusual operating circumstances at the state or
21 generation company levels in any given year.

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

1 2007.

2 We agree with EPA that the issue of growth should
3 be addressed in the regulation. We believe, however, that
4 the marketplace is a better place to determine where the
5 growth will take place rather than the regulation, which
6 needs only to estimate a level of growth expected in the
7 22-state region.

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

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

20 Thank you.

21 MR. WILSON: Thank you.

22 Mr. Bedwell.

23 MR. BEDWELL: Good morning. My name is Allan
24 Bedwell. I'm deputy commissioner of the Massachusetts

1 Department of Environmental Protection. It's good to see
2 you.

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

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

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

20 There is cause for concern. Large, well-heeled
21 interests, particularly electric utilities who are already
22 nervous about losing their protected monopoly status, are
23 doubling their risk that people are now talking seriously
24 about leveling the playing field. As the day draws near

1 when fair competition rules the land and all power
2 generators are held to the same environmental and economic
3 standards, some political leaders will seek to curry favor
4 by delaying the inevitable. Some already have. And you
5 know who you are.

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

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

22 We know from experience how difficult it will be
23 to convince others of the inevitability of the fairness we
24 seek through the proposed 110 SIP calls. We know because we

1 have tried a number of arguments. Political arguments, for
2 one. For example, that the Northeast has already paid more
3 than its fair share in making deep reductions in NOx
4 emissions.

5 In Massachusetts alone, from 1990 to 1996 we have
6 reduced NOx emissions from 41,000 tons to 16,000 tons, and
7 by the year 2003 we will have reduced NOx emissions down to
8 12,000 tons, a 78 percent reduction. Yet, because of
9 transport from grandfathered generators, we still will not
10 be in attainment with current health-based standards, let
11 alone future health-based standards.

12 We have also tried legal arguments. For example,
13 if states do not adhere to the 110 SIP call process and
14 either the states or EPA delays emission reductions, then we
15 will seek controls on specific utility sources through our
16 126 petitions. Simply put, our 126 petitions are the
17 fail-safe that gets the Northeast the clean air it deserves
18 by taking away any discretion from midwestern states and how
19 they control sources.

20 Finally, we have also tried economic arguments.
21 For example, the low cost electricity producers outside the
22 Northeast enjoy such a huge price differential now that any
23 cost increases they may face could easily be absorbed and
24 high cost Northeast utilities could still be handily

1 undersold. I've even heard that at least one important
2 Midwest utility company has hinted they would be willing to
3 absorb one or two mills of increased cost per kilowatt hour
4 now just to get this issue behind them and be first in line
5 for future sales.

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

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

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

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

1 cost-effective actions to protect public health.

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

8 Thank you for your time.

9 MR. WILSON: Thank you.

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

17 Since 1990, PSG&E has spent over \$1 billion in
18 investing in clean, state-of-the-art gas turbine combined
19 cycle repowerings and other emission control technologies.
20 As a result, we have reduced our NOx emissions by over 70
21 percent, and we have gone from representing 27 percent of
22 the New Jersey statewide NOx inventory to representing just
23 over 5 percent in 1997. Quite an accomplishment. Moreover,
24 1995 data showed that the average NOx emission rate for each

1 megawatt hour of electricity that we produce is the fifth
2 lowest among the 50 largest electric utilities in the
3 eastern United States.

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

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

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

24 My main purpose today, however, is to focus on the

1 six key principles that PSG&E believes need to be in the
2 forefront of the dialogue about the proposed NOx transport
3 rulemaking.

4 1. Regional NOx emissions must be limited to
5 490,000 tons during the ozone season. OTAG analyses
6 demonstrate that NOx emissions must be limited to
7 approximately 490,000 tons during the ozone season; to
8 resolve this problem by reducing power plant NOx emissions
9 to an equivalent of 0.15 pounds per million Btu on a heat
10 input basis.

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

18 Rather than detail the matter, however, I brought
19 with me a copy of the report by NRDC and PSG&E that fully
20 details why we need to reduce NOx emissions to approximately
21 490,000 tons during the ozone season. I would ask that this
22 report be included in the record of these proceedings.

23 2. The most cost-effective way to achieve the NOx
24 reductions is to impose a uniform control standard on power

1 plants along with their emissions trading program.

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

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

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

18 Second, as demonstrated by the acid rain trading
19 program, implementing a trading program concurrent with
20 power plant controls will significantly improve the
21 cost-effectiveness by reducing the cost of compliance. A
22 trading program will also provide companies with the
23 flexibility that a few may need to achieve timely
24 compliance.

1 3. An emissions cap is needed to ensure that the
2 environmental benefits of the proposed rulemaking are
3 preserved over time.

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

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

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

22 MR. WILSON: Your time is up.

23 MR. SEVENSEN: I will finish up real fast.

24 5. The proposed NOx emissions controls should be

1 fully implemented by September 30, 2002.

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

8 Thank you very much.

9 MR. WILSON: Thank you.

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

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

21 MR. BEDWELL: First of all, we are expecting that
22 about the 12,000 ton cap that we will have in 2003 will get
23 us close but not to the 1.5 pounds per megawatt hour or .15
24 target in the SIP call. We are fully planning to get there,

1 though, and we are very hopeful that the SIP calls remain as
2 a standard. In terms of that standard, we are pledged to
3 getting the .15. So it would actually reduce lower than
4 12,000. That's our agreement under the NOx MOU for the OTC.

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

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

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

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

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

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

24 MR. WILSON: Thank you all for coming.

1 That concludes the series of witnesses we had
2 scheduled for this morning. We are a little ahead of
3 schedule. Because we gave people rough times, rather than
4 move ahead with another panel, we will just break earlier.

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

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A F T E R N O O N S E S S I O N

[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

1 extend the SIP call to attainment areas hundreds of miles
2 away from the nation's remaining nonattainment areas.

3 First, some background information.

4 As a result of the 1990 Clean Air Act Amendments,
5 Ohio had seven metropolitan areas designated nonattainment
6 for ozone. As a result of our extensive air pollution
7 control programs in Ohio, six of those seven areas have been
8 redesignated to attainment. The remaining nonattainment
9 area, Cincinnati, had one monitor in the most western part
10 of the state with a fourth high reading of 0.125 parts per
11 million for one hour last summer. But for this exceedance
12 in the southwest corner of Ohio, the entire state has
13 achieved the standard, with all the remaining 33 ozone
14 monitors to the north and east of Cincinnati meeting the
15 1-hour ozone standard.

16 U.S. EPA's proposal is an outgrowth of the work
17 and recommendations of the Ozone Transport Assessment Group
18 (OTAG). During that multistate cooperative process we were
19 given assurances from U.S. EPA that states would be provided
20 with adequate time to conduct subregional modeling in order
21 to provide U.S. EPA with an alternative demonstration of the
22 reductions that are needed to meet the air quality
23 standards. Instead, U.S. EPA has provided only 120 days for
24 states to present comments and subregional modeling.

1 Ohio EPA had requested an additional 120 days to
2 submit additional modeling, and as part of our testimony
3 today Ohio repeats its requests for more time. This is
4 consistent with OTAG recommendations that subregional
5 modeling be performed.

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

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

18 U.S. EPA has stated that these reductions will
19 also assist in the achievement of the 8-hour standard. This
20 may be an accurate statement. However, the 8-hour standard
21 cannot and should not be used as a reason for this action.
22 U.S. EPA has promulgated a separate regulatory action and a
23 schedule for attainment of the 8-hour standard that should
24 be followed.

1 Similarly, U.S. EPA has attempted to intertwine
2 the 126 petitions filed by some Northeast states to the SIP
3 call. Again, if U.S. EPA has any authority to act on these
4 petitions, and we strongly contest the ability of U.S. EPA
5 to grant these petitions, it should be handled separately.

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

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

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

1 additional modeling to U.S. EPA for consideration.

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

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

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

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

23 Thank you for the opportunity to present these
24 comments.

1 MR. WILSON: Thank you.

2 Mr. Colburn.

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

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

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

20 The first is its cost-effectiveness. It focuses
21 on utility controls, and utility controls are the most
22 readily available, least costly to achieve on a dollar per
23 ton basis. I have some familiarity with that because I
24 chaired an effort during OTAG to objectively assess the

1 utility control costs, and based on actual experience and
2 comprehensive market quotations, those numbers came in at
3 about half inflated utility estimates.

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

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

20 Further, it is increasingly likely that even the
21 lowest cost estimates will be overstated. I'm made aware
22 that Union Electric in St. Louis, Missouri, is now operating
23 tangential units at 0.22 pounds per million Btu, shooting
24 for 0.15, this through combustion modifications only. We

1 were told during OTAG by utilities that 0.15 would require
2 broad SCR and would eliminate any possibility of trading.
3 Now it appears that that point may be reachable without any
4 bolt-on end of pipe controls.

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

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

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

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

24 It also recognizes the extent of transport, that

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

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

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

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

24 The other two reasons. The SIP call will markedly

1 reduce ozone in not only the Northeast, but in the Ohio
2 River Valley and the South, and it would be rational in
3 light of greater harmonization with the new standard for
4 acid rain, and so forth.

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

11 MR. WILSON: Thank you.

12 Ms. Wade.

13 MS. WADE: Thank you.

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

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

20 We believe the OTAG has demonstrated that in order
21 to address the interstate transport issue large reductions
22 in NOx emissions are going to be needed in states ranging as
23 far west as Wisconsin and Missouri and as far south as
24 Georgia and Alabama.

1 It's our expectation that the demand for these
2 reductions is only going to increase in the future as
3 additional environmental problems such as acid rain, the new
4 NAAQS standards, and eutrophication of some of the waterways
5 demand additional attention from policymakers.

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

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

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

23 Our first area of comment regards the NOx emission
24 budgets. While EDF applauds this approach, we are concerned

1 that EPA is not going to fully implement these budgets as
2 expressed in the current rulemaking. Therefore we urge EPA
3 to do the following:

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

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

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

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

24 Our second area of comment regards timing. EPA

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

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

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

17 Specifically, we think that lower than predicted
18 growth should not count as a control strategy. We agree
19 with EPA in that assessment. Prior to 2007, when the
20 transport analysis is completed by EPA, we believe that if
21 growth factors used to determine the budgets are determined
22 to be significantly overestimating growth, then the budgets
23 should be changed to reflect the application of the original
24 emission assumptions to the new growth factors.

1 Similarly, when evaluating the enforceable
2 measures adopted by the states, we think EPA should request
3 that states include a method for reconciling predicted
4 activity levels and actual activity levels. If the delta
5 between these levels is significant, there should be some
6 method for holding the environment harmless.

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

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

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

22 Finally, we applaud EPA's effort to encourage
23 energy efficiency, but we caution against giving that any
24 less rigorous review than any other control technology.

1 Under a firm emissions cap, if energy efficiency does
2 provide emission benefits, it should be demonstrated in the
3 cap, and if it's not, then from an air quality perspective
4 it doesn't help us.

5 Thank you for the opportunity to give these
6 comments.

7 MR. WILSON: Thank you.

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

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

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

22 MR. HODANBOSI: No. I'm just saying that I would
23 not want individual states singled out for attaining the
24 bulk of these reductions.

1 MR. WILSON: I'm just trying to understand what is
2 okay in that regard, in terms of differentiating between
3 states.

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

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

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

20 MR. WILSON: You also implied that we were doing
21 126 as part of the 110 process. Can you explain that?

22 MR. HODANBOSI: Even in your opening comments you
23 mentioned the 126 process that is going on and how some of
24 that is being coordinated with this action.

1 MR. WILSON: Only timing-wise. They are separate
2 processes. That's what our plan was. I didn't know if you
3 had something other particularly in mind.

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

7 MR. WILSON: John.

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

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

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

23 MR. HODANBOSI: Oh yes.

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

1 understand.

2 MR. WILSON: Howard.

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

5 MR. HODANBOSI: Yes.

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

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

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

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

1 you a submittal by the deadline.

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

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

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

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

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

21 Second, contrary to what OTAG recommended, the SIP
22 call proposal calls for more NOx reductions than would have
23 been produced by the most stringent of the options
24 recommended by OTAG. It demands that all covered utility

1 sources meet a NOx emission rate of 0.15 pounds even if that
2 rate represents a reduction of more than 85 percent at the
3 unit.

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

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

15 The second issue that I want to address is EPA's
16 overly optimistic claims about the use of trading to achieve
17 specified reductions and at reduced costs. We certainly
18 support trading at EEI. We have on SO2, and we do on other
19 issues as well. But we have a difficulty here in that even
20 if you get to the levels that are talked about in terms of
21 0.15, the question is how many excess tons there would be
22 available for selling, banking, trading, et cetera.

23 Our preliminary analyses indicate that there will
24 not be a lot of excess tons that could be used in this

1 program because we will be virtually at the limit of the
2 technology, give or take a hundredth of a pound here or
3 there.

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

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

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

23 Thank you.

24 MR. WILSON: Thank you.

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

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

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

18 EPA acknowledged that its proposal was not
19 complete and said that to remedy this problem it would issue
20 a supplemental notice of proposed rulemaking that would
21 include the guts of its program: refined budget numbers,
22 the needed air quality analyses of the proposed budgets, a
23 proposed model cap and trade rule, the proposed rule
24 language, et cetera.

1 The supplemental notice was originally to be
2 published in early 1998, which would have allowed at least
3 some time for public evaluation of and comment on a complete
4 proposal before the current March 9th comment deadline.
5 Now, though, EPA representatives say the supplemental notice
6 will not be published until late March or early April.

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

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

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

22 A second issue I will address is the feasibility
23 of installing the required nitrogen oxide controls in the
24 specified time period.

1 EPA's proposal makes it clear that it will ask
2 affected states to revise their SIPs by September 1999 in
3 order to incorporate the range of requirements set out in
4 the SIP call proposal. EPA then proposes to give affected
5 sources three years at most, until 2002, in which to achieve
6 those reductions.

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

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

20 NOx controls vary tremendously from boiler to
21 boiler, and each must be designed individually.
22 Furthermore, low NOx burner technology during Phase I of
23 Title IV was a far more mature technology than selective
24 non-catalytic reduction is now for larger boilers.

1 Once EPA's final budget numbers are released in
2 the supplemental notice, the industry will undertake such an
3 analysis.

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

7 MR. WILSON: Thank you.

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

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

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

24 First, EPA's proposal ignores key statutory

1 provisions that limit EPA's authority to use the SIP call
2 process to address regional ozone transport issues.

3 Specifically, EPA's use of the SIP call process to address
4 interstate transport issues ignores sections 176A and 184 of
5 the Clean Air Act, which were added to the statute in 1990.

6 Section 176A says that if EPA has reason to
7 believe that emissions from one or more states contribute
8 significantly to an ambient standard violation in one or
9 more other states, then EPA may establish a transport region
10 and commission for those states. Section 184 did this for
11 the Northeast.

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

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

1 this.

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

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

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

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

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

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

11 Since there is not yet an accepted method for
12 linking OTAG's modeling of a few days to an estimate of an
13 area's 8-hour ozone standard design value for a specific
14 3-year period in the future, EPA came up with its own
15 methodologies for making that link.

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

24 Finally, the proposal overstates the number of

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

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

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

16 EPA has tried to explain its use of the 8-hour
17 standard by saying that even though the agency will not
18 designate any 8-hour nonattainment areas before the year
19 2000 and will not ask states to revise in-state 8-hour
20 nonattainment areas before 2003, EPA nevertheless has the
21 authority to require individual states to take action before
22 the year 2000 to address 8-hour nonattainment outside of
23 their own boundaries.

24 Let me give an example of this. North Carolina

1 now has no areas designated nonattainment for either the
2 1-hour standard or the 8-hour standard. But let's assume
3 that EPA later decides that Charlotte, North Carolina, has
4 air quality that is not attaining the 8-hour standard.

5 EPA appears to be saying that until Charlotte is
6 designated nonattainment for the 8-hour standard EPA will
7 not require North Carolina to take any steps to revise its
8 SIP to address 8-hour concerns with Charlotte. But under
9 the terms of the proposed SIP call, EPA would require other
10 states, like South Carolina, to revise their SIPs to address
11 8-hour concerns in Charlotte.

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

20 In closing, I would like to ask for an extension
21 of the comment period so that when we get the additional
22 data, which we assume will be coming soon -- the
23 inventories, we understand, will be model-ready this week,
24 so that actual modeling using the EPA inventory can start

1 now. We would like 120 days after all of the information is
2 available for comment so we can comment on it all at one
3 time.

4 Thank you.

5 MR. WILSON: Thank you.

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

11 MS. FIELD: Yes, that's right. We keep mentioning
12 poor North Carolina just because it's an example of one that
13 has absolutely no 1-hour nonattainment problems, nor does it
14 contribute significantly to 1-hour problems. They, of
15 course, are going to be working on coming up with a plan to
16 deal with the 8-hour standard if there are areas that aren't
17 meeting it. I'm assuming other states will be looking at
18 what they are doing with the 8-hour in coming up with their
19 1-hour plans, but they are not required, and under the
20 program that EPA has come up with, they will not be required
21 to come up with an 8-hour attainment program until 2003.

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

24 The next group is Mr. Mike Menne, Mr. Stephen

1 Fotis, and Mr. Robert Wyman.

2 MR. MENNE: Good afternoon. My name is Mike Menne
3 of Ameren Corporation. I represent the operating companies
4 of Union Electric and Central Illinois Power.

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

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

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

23 However, the complex photochemical
24 transformations, diffusion and dispersion of a wide variety

1 of natural anthropogenic emissions which lead to ozone
2 formation are ignored in these analyses. Thus little if any
3 weight should be given to this evidence when it is being
4 used to justify controls on emission sources hundreds of
5 miles from the measured ozone concentrations.

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

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

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

21 When looking at the small fraction of PECO's own
22 concentrations reduced with the proposed SIP call program,
23 the program by this metric is not at all cost-effective. If
24 we are able to complete our subregional modeling analysis in

1 the time allowed to comment on this rulemaking, more
2 information will be submitted to clearly illustrate this
3 point.

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

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

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

22 We would suggest, if the point of the SIP call is
23 to take a significant number of tons out of the atmosphere
24 in the eastern U.S., then there is a better way to achieve

1 this goal. Union Electric Company, as has been mentioned
2 here by Ken Colburn, has been among the leaders in the
3 nation demonstrating that significant NOx reductions from
4 coal-fire power plants can be achieved at a relatively low
5 cost compared with chemical or ammonia treatment systems.

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

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

24 I would also say in response to Ken Colburn's

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

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

17 Thank you.

18 MR. WILSON: Thank you.

19 Mr. Fotis.

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

23 For your reference, Santee Cooper is the fourth
24 largest non-federal public power system in the United

1 States, and Santee Cooper is committed to reducing NOx
2 emissions from sources that significantly contribute to
3 ozone nonattainment problems either in our local South
4 Carolina communities or in downwind states. It is with this
5 strong commitment to clean air that Santee Cooper presents
6 its views this afternoon.

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

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

19 Also, EPA's methodology appears to rely on a
20 number of questionable modeling assumptions that may tend to
21 overestimate the importance of each particular state's
22 relative contribution. One example pertains to the assumed
23 synergistic effect that arises from combining one state's
24 emission reductions with those of several neighboring

1 states.

2 Santee Cooper believes that as a result of these
3 types of methodological problems EPA has failed to meet the
4 significant contribution requirement established under the
5 Act. This failure has important implications for OTAG
6 borderline states such as South Carolina.

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

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

22 First, the new standard was in effect for only
23 about a month prior to EPA finding that states' ozone
24 implementation plans are deficient for that standard.

1 Two, that EPA will not designate any area as
2 nonattainment for the new 8-hour standard until the year
3 2000.

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

7 EPA's proposal thus has the practical effect of
8 vaulting the 8-hour ozone transport control strategies ahead
9 of the implementation of the transport strategies for the
10 1-hour standard and the local control strategies for the
11 8-hour standard. This is clearly not authorized under the
12 Act and is inconsistent with the presidential directive
13 issued last July.

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

23 MR. WILSON: Thank you.

24 Mr. Wyman.

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

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

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

22 We do not believe that the proposed SIP call is
23 compatible with this objective. While regional NOx controls
24 have a role to play in state strategies to attain the ozone

1 standard, these controls should be designed to address the
2 divergent air quality needs of the states in the region in a
3 manner that is cost-effective and recognizes environmental
4 and economic differences among subregions in the eastern
5 United States. In principle, EPA acknowledges that
6 cost-effectiveness is an important criterion, but part of
7 any cost-effectiveness analysis must be a consideration of
8 the relative effectiveness of reducing NOx emissions in
9 different subregions in improving air quality in areas of
10 concern.

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

23 We believe that OTAG was on the right track, that
24 further modeling can show us where the greatest reductions

1 should occur and where additional reductions would yield
2 little if any air quality benefit and that a range of
3 emission limits should be considered in developing a
4 regional transport strategy. Taking the OTAG
5 recommendations into account, the alliance has developed a
6 proposal that is cheaper, smarter, better to address the
7 transport and overall nonattainment problems.

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

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

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

22 This two-step process assures prompt progress
23 towards attainment but allows EPA and the states to tailor
24 the most stringent reduction requirements to those areas, if

1 any, where further upwind reductions are determined to be
2 more effective than local reductions. The proposal thus
3 would significantly reduce the overall cost of the program
4 while still achieving any appropriate transport-related
5 benefits of regional NOx controls.

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

11 The potential value of a NOx control program based
12 on differential subregional targets is implicitly recognized
13 in your SIP call proposal. In our view, it is the most
14 appropriate way to use scarce national resources. To ensure
15 that this option remains viable given the agency's
16 expeditious timetable, we believe that EPA must include it
17 in its upcoming supplemental notice regarding a model
18 trading rule. Including such an alternative approach in an
19 SNPR was expressly recognized in your proposal on page
20 60,343.

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

1 that you do that in your supplemental notice.

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

8 Thank you.

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

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

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

22 MR. WYMAN: I agree with Mike, who spoke earlier
23 on this panel. Of course it depends on the individual
24 circumstances of each utility, but in our experience 55

1 percent does provide a significant reduction for many of the
2 utilities that are certainly part of our alliance.

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

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

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

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

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

23 MR. WYMAN: You're talking about the 1-hour
24 standard?

1 MR. SEITZ: With the 1-hour.

2 MR. WYMAN: I understand.

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

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

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

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

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

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

1 using.

2 MR. WILSON: Howard.

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

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

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

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

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

24 MR. MENNE: There are a number of receptor areas.

1 They include the entire OTAG domain. We are looking at
2 receptors in the entire OTAG domain, but we are focusing
3 primarily on the Chicago area because that's where the
4 culpability back to our units has been most targeted.

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

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

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

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

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

23 Because many of these industries have combustion
24 processes in their plants, this proposed rulemaking to

1 greatly reduce NOx emissions from these facilities will have
2 a significant impact on our members. We are fondly referred
3 to as the non-utility point source category. Translated,
4 this means all of our chemical and plastic makers, coal prep
5 facilities with dryers, natural gas compressor stations,
6 kilns, furnaces, and other combustion sources, not just
7 boilers.

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

16 EPA has failed to assess the impact of this
17 proposed rule on the small businesses which will be targeted
18 by attempting to dodge the Small Business Regulatory
19 Enforcement Fairness Act. As you well know, SBREFA requires
20 EPA to assess the potential impact of a proposed rule on
21 small business entities before a rule is proposed. Instead,
22 from the outset EPA decided that SBREFA does not apply to
23 this action since they are simply imposing budgets on the
24 states. This cavalier attitude ignores the fact that the

1 states would not have to impose limitations on any sources,
2 including small sources, but for EPA's mandate to reduce.

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

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

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

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

23 If the basis of this rulemaking is assumed
24 transport of ozone precursors, then any reductions

1 ultimately required should, in equity, be based upon
2 comparable cost per tons removed, the distance the source is
3 located from a nonattainment area, and the stack height of
4 that source. EPA has never before made determinations of
5 this sort based on entire geographic and political
6 boundaries. In fact, we believe that the Clean Air Act does
7 not allow this interpretation.

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

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

21 In addition, manufacturers will be faced with the
22 direct cost of reductions of NOx at their own facilities.
23 As nonregulated entities, manufacturers will not be able to
24 simply pass through those costs to their customers, as they

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2 We believe that EPA has significantly overreached
3 in this SIP call proposal. It is asking the states,

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5 little or no benefit to air quality in the Northeast. If
6 these reductions are made, even EPA's own models do not

7

8 areas, clogged with vehicles, will continue to violate the
9 ozone standard, we believe.

10

11 compliance. Therefore, we respectfully dissent and ask that
12 EPA go back to the drawing board and fashion a reasonable

13

14 problems which may exist on a subregional basis, and in the
15 meantime hold fire to the feet of the Northeast states to

16

17 Thank you very much.

18

19 MR. WILSON: Thank you.

20

21 MR. GRAY: Mr. Wilson, thank you for having me
22 here today. My name is Mark Gray. I'm manager of the

23

24 here today to express my company's concern over the proposed
SIP call.

1 American Electric Power representatives were very
2 active participants in the OTAG process and have worked
3 closely over the past few years with the states in which we
4 operate to evaluate the nature of the ozone problem and take
5 actions to address the issue.

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

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

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

24 EPA has not abandoned the concept of

1 differentiated control levels for utility sources, but it

2

3 stringent of the range of the whole 22-state region covered
4 by the proposal. By adopting an extreme position on the

5

6 technically supported, EPA has also broken faith with the
7 OTAG participants on the science which guided the process.

8

9 transport was not a significant contributor to the
10 nonattainment in various regions, the need for the

11

12 obvious. The OTAG states expected at least an additional
13 year would be available during which more detailed modeling

14

15 The EPA has not allowed the states that time but
16 has instead unilaterally proposed an extreme control program

17

18 be disbenefits to Midwest airsheds, potentially worsening
19 the ozone level in some localized areas. And it is

20

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

23

EPA has also broken faith by accelerating the

1 timetable for implementation of controls. The OTAG states
2 considered various implementation schedules and focused on
3 the year of 2004 as an appropriate target. This target year
4 was based on sound understanding of the measures necessary
5 to select the appropriate control technology, schedule the
6 construction, and complete the implementation.

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

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

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

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

24 First, there should be a range of control options,

1

activity. Most importantly, there must be something to
3 trade.

4

it will effectively be only one control option: selective
6 catalytic reduction, and the limits of that technology will
7

It is essential that the states be given the time
9 needed to develop control programs to achieve their own air
10

to the OTAG airshed. This is particularly true now that the
12 states will have to meet the new 8-hour standard.

13

alliance of utility companies and is prepared to work
15 closely with our states and to achieve significant emission
16

and strategies that will attain the new ozone standard as
18 well. We believe that such an alternative to EPA's proposal
19

air at a much lower cost, and we ask the EPA to support this
21 alliance in a constructive compromise to the SIP call.

22

MR. WILSON: Thank you.

24

Mr. Flannery.

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

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

19 Incredibly, EPA's proposed NOx SIP call does not
20 have as its objective attainment of the ambient air quality
21 standard for ozone, a clear legal defect. Indeed, EPA knows
22 perfectly well that the emission reductions contemplated by
23 the proposal will not have a significant effect on the
24 serious and severe nonattainment areas of the Northeast.

That is, of course, because the noncompliance problems of
2 the Northeast are local concerns that are in great part
3
to regulate their own sources in favor of trying to find
5 some way -- any way -- to shift responsibility and cost to
6

Consider for a moment the situation that exists in
8 the Northeast in which the states of New Hampshire and Maine
9
submit appropriate enhanced I/M programs at all. This is
11 apparently related to a judgment on the part of the
12
though required by law, are so politically unpopular as to
14 cause those states to prefer to violate a mandatory
15
of the voters.

17 Politically unpopular or not, enhanced inspection
18
knows the significant ozone improvements that will result
20 from the implementation of these and other mandatory
21

however, elects to ignore the failure of the Northeast
23 states to comply with these mandatory requirements and takes
24

1 necessarily be applied within the Northeast if the ozone air
2 quality standard is to be achieved.

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

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

19 In the case of Massachusetts, consider the January
20 14, 1994, letter from Massachusetts Air Quality Control
21 Director Barbara Kwetz to Mr. Seitz in which she raises a
22 number of concerns about the movement of ozone precursors
23 from the dirtiest areas of the Northeast to less dirty
24 areas, stating:

1 "This is the case for the marginal and moderate
2
3 downwind from Massachusetts, and for the serious
4 nonattainment areas of Connecticut, New Hampshire,
5
6 the severe nonattainment area of the New York metropolitan
7 region, New Jersey and the rest of the Ozone Transport
8

9 In the case of New Hampshire, an August 25, 1997,
10 memo from Director Colburn to his legislative leadership has
11

12 "All of the state's ozone violations over the last
13 three years have occurred at the Rye Harbor monitoring
14
15 emissions."

16 And a similar statement that I have included in my
17
18 pointing to the City of New York and urban areas there as
19 creating their highest ozone levels.
20

21 forth in detail in our written comments, we urge that EPA
22 refrain from further development of its proposed SIP call in
23
24 science to determine the nature and extent of emission

1 reductions that will assure attainment of the ozone ambient
2 air quality standard without imposing unnecessary controls
3 on sources that are not significantly contributing to that
4 problem.

5 MR. WILSON: Thank you.

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

15 MR. GRAY: We can do that.

16 MR. WILSON: Thank you.

17 MR. SEITZ: Two quick ones, one clarification, Ms.
18 Price. You can submit for the record on this. I thought I
19 heard you say that the cost of control in West Virginia
20 would be higher than control in nonattainment states such as
21 Pennsylvania. I'm not quite sure I understand that. You
22 don't need to go into detail on that now, but if you could
23 submit for the record a statement of that and the economic
24 analysis of how you get there.

1 In addition, Mr. Flannery, I take it you are
2 disagreeing with Commissioner Seif on the monitored data of
3 the air quality being 94 percent of the 1-hour standard at
4 the Ohio-Pennsylvania border.

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

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

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

18 MR. SEITZ: Thank you.

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

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

23 If there is anybody here who wanted to testify
24 today and hasn't let us know, if you would please check in

1 with the registration desk.

2 Ms. Wright.

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

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

17 While EPA has the authority pursuant to section
18 110(k) of the Act to issue a SIP call enforcing 110(d) of
19 the Act, this authority must be implemented through the
20 Interstate Transport Commission process spelled out in
21 section 176(a) of the Act. EPA has not proceeded by way of
22 this mechanism in the proposed rulemaking. It essentially
23 ignores that the Act requires a state showing of SIP
24 inadequacy rather than a general finding of inadequacy.

1 Finally, EPA proposed that each targeted state,
2 including Ohio, impose a cap on NOx emissions despite the
3 fact that the Act does not require that such a cap be used
4 to address an alleged SIP deficiency.

5 As to EPA's discussion pertaining to the new
6 8-hour ozone standard, EPA has claimed there to be SIP
7 deficiencies before the SIPs for that standard are required
8 to be submitted. Key parts of EPA's analysis, for example
9 the proposed method for determining through modeling which
10 areas will fail to attain the 8-hour standard, are based on
11 questionable modeling and statistical techniques that have
12 not undergone any sort of peer review.

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

21 EPA further proposed a more stringent emission
22 reduction level than that recommended by OTAG. EPA's SIP
23 call ignores OTAG's recommendations that subregional
24 modeling be completed before defining whether any, and if

1 so, what amounts of additional NOx reductions should occur.

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

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

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

21 In addition to previously mentioned substantive
22 issues, we have a number of concerns with the procedural
23 aspects of the SIP call. EPA has indicated its intent to
24 publish the final SIP call by November 30, 1998. It has

1 established only a 120-day comment period ending March 9,
2 1998. However, you have not fully articulated in the SIP
3 call proposal essential parts. These parts include the air
4 quality analysis predicting the air quality impacts of the
5 EPA SIP proposal, the final state NOx budget numbers, and
6 sufficient information pertaining to EPA's views on the
7 types of trading programs that would be allowed for
8 implementing the agency's proposal.

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

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

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

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

24 Ohio Electric Utility Institute Environmental

1 Committee member companies strongly encourage U.S. EPA to
2 reevaluate the SIP call proposal and incorporate OTAG
3 recommendations as well as the comments provided today.

4 MR. WILSON: Thank you.

5 Mr. Barrett.

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

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

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

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

20 OTAG grouped states and analyzed the ozone
21 transport, but further analysis that would indicate
22 individual state contribution is essential in determining
23 what is a fair and equitable control for the states that
24 might be required or even needed.

1 In Alabama we need to find out how much we affect
2 Atlanta, Tennessee, maybe Mississippi, and how much they
3 affect us. Then you could have justification for controls.

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

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

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

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

1 even though the proposal acknowledges that transport is less
2 in the South.

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

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

19 With that, I conclude my remarks.

20 MR. WILSON: Thank you very much.

21 Mr. Roosa.

22 MR. ROOSA: My name is Bryan Roosa, and I'm the
23 deputy director of the State of Michigan Washington office.
24 I'm here pinch-hitting today for our state's Department of

1 Environmental Quality, with testimony provided by our Air
2 Quality Division.

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

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

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

18 The impact of specific states on any particular
19 nonattainment problem has yet to be identified. Targets
20 selected by EPA at this point are based on overly simplistic
21 interpretation of the modeling done to date, and they depart
22 from the recommendations of OTAG which called for additional
23 subregional modeling and urged consideration of a range of
24 emission reduction targets. Therefore, picking target

1 reductions at this point cannot be justified. Instead, EPA
2 should consider defining the ranges of reductions that
3 should be used to initialize the subregional modeling with a
4 goal of determining the final emission reduction target.

5 Michigan and other states made presentations
6 during the OTAG process which clearly showed that transport
7 from the Midwest was not as predominant as EPA had
8 originally theorized. Our modeling is showing that between
9 70 and 80 percent of the ozone observed in the Northeast is
10 due to precursors emitted in that region. In fact, our
11 modeling shows that zeroing out Michigan emissions will not
12 produce widespread air quality benefits for downwind areas
13 exceeding 124 parts per billion.

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

21 Equally as important, we have discovered there is
22 a likelihood of ozone increases as a result of NOx
23 reductions. This likelihood is critical in both west and
24 southeast Michigan. West Michigan was granted a section

1 182(f) NOx waiver after modeling demonstrated ozone
2 disbenefits in the Lake Michigan region from reduction in
3 NOx emissions. Between 1992 and 1995, extensive study of
4 ozone pollution in southeast Michigan determined that local
5 NOx controls there would result in ozone disbenefits as
6 well.

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

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

20 Our department is astounded that EPA has proceeded
21 with a proposed cap on NOx emissions for Michigan without a
22 quality assured emissions inventory. The available
23 inventory may have been adequate for general modeling, but
24 it's hardly adequate for establishing a statewide cap.

1 We are also concerned with the agency's cost
2 analysis which relies on extreme control technology rather
3 than determining if the emissions from the affected state
4 are having a significant impact on ozone transport. The use
5 of a consistent cost-per-ton strategy rather than an
6 approach of minimizing cost based on changes in ozone
7 concentrations downwind is fiscally irresponsible and will
8 hamper the use of emissions trading.

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

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

20 Thank you.

21 MR. WILSON: Thank you.

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

24 MR. ROOSA: I have a limited knowledge and I would

1 like to defer that to our quality folks. However, I
2 understand it is CaMx modeling. I'm sure that that will be
3 provided more extensively in our written comments.

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

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

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

9 MR. BARRETT: Right.

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

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

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

24 The next panel, Ms. Elizabeth Lanier, Mr. Quin

1 Shea, and Mr. David Long, please.

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

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

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

20 We have put on 87 percent of our system low NOx
21 burners and overfire air since 1990. We have spent more
22 than \$100 million attributable exclusively to reduction of
23 NOx levels and have achieved 27 percent reductions from our
24 1990 levels.

1 We also have under way a boiler optimization
2 program which will be installed system-wide.

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

9 Instead, Cinergy has spent the last several months
10 consulting, as many of you all know, with the EPA, with our
11 states, and working with other utilities, labor and other
12 organizations towards the development of an alliance to
13 propose and support an alternative. The alternative is a
14 2-step phased plan that would guarantee additional air
15 quality benefits to our region in a timely and
16 cost-effective manner.

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

24 We supported OTAG, and we acknowledge the OTAG

1 modeling suggests that our power plant emissions play a role
2 in the formation of ozone in nonattainment areas such as
3 Cincinnati and Louisville.

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

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

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

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

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

20 In the moments I have left before my time runs out
21 I would like to focus on one aspect of the ACAP proposal
22 which Bob mentioned briefly but didn't elaborate on, and
23 that is the need for a clean air investment fund that is
24 part of our proposal.

1 As you all know, President Clinton's initiative on
2 NAAQS announced in July emphasized the need for a clean air
3 investment fund to ensure a reasonable cost of compliance
4 for proposed new air quality standards. We believe that the
5 flexibility that an investment fund provides should be
6 endorsed and embraced as part of the NOx proposal. We
7 believe that where companies would face excessive cost for
8 compliance they should have the alternative to invest in a
9 fund which could be used to pay for reductions made in other
10 sectors and to fund research in advanced control
11 technologies.

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

17 Thank you.

18 MR. WILSON: Thank you.

19 Mr. Shea.

20 MR. SHEA: Good afternoon. My name is Quin Shea,
21 and I am the director of environmental affairs for the
22 National Mining Association based here in Washington, D.C.
23 NMA represents over 400 companies in the mining industry
24 domestically. We intend to submit detailed comments prior

1 to March 9th but in the interim would like to bring to your
2 attention a few key concerns.

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

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

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

21 Yet EPA has acknowledged publicly that the
22 November 7, 1997, proposal is incomplete and will need to be
23 supplemented through yet another proposal that will include,
24 among other things, actual rulemaking language, revised

1 budget numbers, air quality modeling analyses, and a
2 proposed NOx cap and trade program. Unfortunately, this
3 supplemental proposal will not be published until after
4 March 9, thereby prohibiting meaningful public comment.
5 This is both unfair and illegal.

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

12 EPA has concluded that it may resort to the
13 110(k)(5) SIP call procedure under the Act in the instant
14 case because state plans for the 22 targeted states do not
15 sufficiently address in-state emission activities that
16 adversely impact downwind states. EPA's conclusion,
17 however, is inapposite to the 1990 amendments and seems to
18 disregard sections 176(a) and 184.

19 The recently concluded Ozone Transport Assessment
20 Group process was a 2-year effort involving 37 eastern
21 states intended to determine the nature and causes of
22 interstate ozone transport and potential violations of the
23 1-hour standard in certain areas. By a vote of 31 to 5, a
24 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

1 NMA believes that such a strange reading of the
2 Act, as contemplated by EPA, was not in fact contemplated by
3 Congress and cannot be supported legally or as a matter of
4 common sense.

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

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

16 I would like to note, though, in response to
17 something said earlier, NMA believes that what we would call
18 maximum drawing board control technology, not available
19 control technology, is not available and will not meet the
20 .15 standard, much less something below. Until we have seen
21 widespread availability of field tested and cost-effective
22 SCR in major units, it doesn't exist.

23 In closing, for those of us in the mining industry
24 to understand the importance of coal utilization, we are now

1 faced with the latest in a long series of extreme regulatory
2 actions reflecting EPA's desire to reduce the use of coal in
3 the United States. The SIP call proposal is neither
4 scientifically nor economically justified, nor is it
5 conducive to maintaining a sound national energy policy.
6 EPA's agenda is being driven by policy objectives, which is
7 unfortunate, as this proposal poses a substantial threat to
8 industries that mine, transport and utilize coal, and to
9 scores of future potentially unemployed miners.

10 Thank you.

11 MR. WILSON: Thank you.

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

18 The IEA appreciates this opportunity to speak at
19 this hearing. Our member utilities are committed to doing
20 our part to aid in attaining ambient air quality standards
21 that protect the health and welfare of the citizens of
22 Indiana and the surrounding states where our emissions have
23 a meaningful and significant and controllable impact on air
24 quality. Unfortunately, this SIP call as proposed by EPA

1 will not result in the measurable results claimed in the
2 Federal Register notice proposing this action.

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

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

23 We have modeled the 1991 and 1995 OTAG episodes,
24 used the 2007 SIMS inventory developed during the OTAG

1 process; then reduced nitrogen oxide emissions by 85 percent
2 on utility and 70 percent on other large point sources in
3 the State of Indiana.

4 My first overhead shows our base case, which is an
5 8-hour plot, much as some of the claims EPA is making that
6 this is necessary for the 8-hour standard. This is our
7 8-hour base case for July 21 from the 1991 OTAG episode,
8 which is the worst day for transport from Indiana from this
9 episode.

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

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

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

24 We performed the same analysis for the 1995 OTAG

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

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

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

1 reductions needed to correct the nonattainment problems in
2 the OTAG region.

3 Thank you for your time and attention.

4 MR. WILSON: Thank you very much.

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

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

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

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

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

20 MS. LANIER: No. I know that we have those data.
21 I don't have them.

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

24 MR. SEITZ: Mr. Long, the model results presented

1 for the record, was that UAM? What model was that?

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

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

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

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

12 MR. LONG: Yes, sir, it does.

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

15 MR. LONG: Very limited, though.

16 MR. WILSON: Thank you all for coming today.

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

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

23 Before I read my piece, I have an admission to
24 make. I was tempted to bring along a flag of Texas to wave

1 before this august body, and even the smallest flag was too
2 big to fit in the confines of my carry-on.

3 [Laughter.]

4 MR. SEITZ: Thank you for your comments.

5 [Laughter.]

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

8 [Laughter.]

9 MR. DHARMARAJAN: Getting down to brass tacks, the
10 focus of my comments will be limited to the four Southwest
11 states of Arkansas, Louisiana, Oklahoma, and Texas, which
12 are listed under the OTAG coarse grid classification and
13 where my company provides electric service to an estimated
14 population of 4.2 million people, covering approximately
15 152,000 square miles. Our generating capability of
16 14,000-plus megawatts includes a broad mix of fuels.

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

1 technical analysis.

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

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

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

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

22 "The recommendations adopted by the policy group
23 recognized that the OTAG analysis demonstrated that
24 transport impacts of the coarse grid areas on the fine grid

1 are minimal and therefore do not include the coarse grid
2 areas for recommended control measures other than those that
3 would be nationally applied."

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

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

12 I believe these are compelling statements.

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

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

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

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

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

1 revocation proposal.

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

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

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

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

15 MR. DHARMARAJAN: Do I get some time back?

16 [Laughter.]

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

19 MR. DHARMARAJAN: Thank you.

20 MR. WILSON: Thank you.

21 Ms. Gander.

22 MS. GANDER: Good afternoon. I'm Sue Gander with
23 the Center for Clean Air Policy. Thank you the opportunity
24 to be here today to discuss the importance of maintaining a

1 strong ozone transport SIP call.

2 The Center for Clean Air Policy is a nonprofit
3 research and environmental advocacy organization founded in
4 1985 by a bipartisan group of state governors in their quest
5 to break the gridlock surrounding the acid rain issue. As
6 you know, we have also been active in the OTAG process.

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

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

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

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

24 4. A broad-based cap and trade program provides

1 the most cost-effective way to reach our reductions goals.

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

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

15 EPA estimates that the utility reductions
16 associated with their SIP call will cost an average of
17 \$1,700 per ton. In comparison, most of the reductions from
18 other sectors would cost significantly more. Not only are
19 utility controls cost-effective, they will also have minimal
20 impact on electricity rates.

21 According to EPA's regulatory analysis, the annual
22 cost for the electricity sector is approximately \$1.5
23 billion per year. This amounts to just 1.3 percent of
24 electricity revenues for the 22 affected OTAG states. This

1 suggests a minimal impact on electricity prices, equivalent
2 to increases on the order of 75 cents per month for a
3 typical household bill. Even if estimated costs are closer
4 to the higher OTAG cost estimates that were developed with
5 the higher utility base assumptions, this would still amount
6 to less than 3 percent of total annual revenues for the
7 industry and minimal rate impacts.

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

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

20 In terms of implementing EPA's proposed rule, cap
21 and trade programs represent the most cost-effective way.
22 The cost-effectiveness of emissions cap and trade programs
23 has been successfully demonstrated through the national SO2
24 trading program as well as other regional programs.

1 Since its earliest work in shaping the acid rain
2 provisions, the center has been a strong supporter of
3 market-based approaches, and we continue to endorse this
4 approach under the SIP call.

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

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

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

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

1 programs.

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

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

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

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

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

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

21 Thank you.

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

24 That concludes the witnesses that we had scheduled

1 for today. As I mentioned earlier, we will begin tomorrow
2 morning at nine o'clock.

3 [Whereupon, at 3:10 p.m., the hearing was
4 recessed, to reconvene at 9:00 a.m., Wednesday, February 4,
5 1998.]

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