UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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PUBLIC HEARING ON

OZONE TRANSPORT SIP CALL

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Washington Plaza Hotel

10 Thomas Circle, N.W.

Washington, D.C.

Wednesday, February 4, 1998

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

MEMBERS PRESENT:

DICK WILSON, OAR

JOHN SEITZ, OAQPS

PAUL STOLPMAN, OAP

HOWARD HOFFMAN, OGC

TOM HELMS, OAQPS

KIMBER SCAVO, OAQPS

LYDIA WEGMAN, OAQPS

BILL BAKER, Region 2

MIKE SKLAR, OMS

JOE TIKVART, OAQPS

C O N T E N T S

C O N T E N T S [continued]

SPEAKER NUMBER PAGE

P R O C E E D I N G S

[9:15 a.m.]

MR. WILSON: Good morning. I think most of the faces look familiar from yesterday, but in case there is anybody who is new here, I will just mention kind of how we are working the hearing.

It's an informal hearing. Witnesses aren't sworn in. We are not cross examining, although the panel may ask a few questions.

We are calling people up in groups of three. Everybody has five minutes. Most of you, I'm sure, have more than five minutes worth of stuff to tell us. Either written comments to the record, or if you have a longer statement, we will accept it and include it in the record.

There is a little timing light that is green when you start speaking, turns yellow with about a minute left, and then turns red when your time is up.

For those of you who have prepared statements, it helps us for the record and for the court reporter if you would turn in copies of that statement ASAP at the reception desk outside.

Also, if there is anybody here who wants to testify who hasn't registered, if you would check in with the registration desk, we will get you scheduled.

We expect to go until roughly 11:30. Then we will take a lunch break. I think we probably have roughly an hour's worth of folks this afternoon. We kicked around seeing if we just worked through lunch. We'll let you know later, but it looks like a few people weren't planning to be here until early afternoon. So we are kind of stuck having an early afternoon session, but, again, it will probably last an hour or hour and a half, just for people's planning purposes.

There is a court reporter. We will have a transcript of the hearing. It will available in the docket within a month, I think.

With that, we will call the first three witnesses this morning, Ms. Ellen Shapiro, Mr. Jerry Levine, and Mr. Ben White.

MS. SHAPIRO: Good morning. My name is Ellen Shapiro. I'm the regulatory liaison manager at the American Automobile Manufacturers' Association. AAMA's members are Chrysler Corporation, Ford Motor Company and General Motors Corporation.

AAMA participated actively and with great interest throughout the long and grueling OTAG process. We were gratified when we saw the OTAG recommendations finally emerge, because they represented a synthesis of the

information and viewpoints presented throughout the process, including many of our own. When we reviewed EPA's SIP call, however, we were disappointed to find that the agency apparently ignored or misinterpreted some of the OTAG recommendations. I will address here two issues of particular concern to us.

First, OTAG recommended that EPA "adopt and implement by rule an appropriate sulfur standard to further reduce emissions and assist the vehicle technology/fuel system to achieve maximum long term performance."

I note that OTAG said "adopt and implement." It did not say "to analyze."

The proposed SIP call, however, fails to incorporate any NOx reductions attributable to lowering gasoline sulfur in the OTAG domain. As we stated throughout the OTAG process, if you include mobile source reductions, then you must also include sulfur control.

Gasoline sulfur plays a critical role in determining how much NOx vehicles will emit, as has been recognized by EPA in its federal reformulated gasoline phase II program and by California in its cleaner burning gasoline program.

Reducing fuel sulfur levels also will have an important effect on lowering mobile source emissions of

hydrocarbons, fine particulate matter, carbon monoxide, oxides of sulfur, and toxic air contaminants. It is a class pollution prevention strategy because it addresses the input to a process in order to influence the output from that process.

We note that the benefits of controlling gasoline sulfur would be felt immediately across the entire in-use fleet of vehicles upon introduction of the fuel. The impact of vehicle design changes, by contrast, takes years to be felt because it depends on the rate at which new vehicles enter the fleet.

Some might claim that the OTAG modeling failed to show a significant ozone benefit from reducing gasoline sulfur. As we explained to the OTAG community at the time, however, OTAG's modeling contains certain critical weaknesses that prevented adequate scrutiny of this emissions reduction strategy.

Fortunately, we don't have to rely solely on modeling to evaluate the ozone benefits of reducing fuel sulfur. We can also look to California's remarkable real world decline in the average measured levels of ozone of up to 18 percent during 1996, the year that it introduced its low sulfur, cleaner burning gasoline. We understand that this progress has been maintained during 1997 as well.

I should note that I was informed before the meeting that the number has been revised downward slightly, to 14 percent, which I think is still a significant number.

While we cannot attribute California's improved monitoring results entirely to the low sulfur level of its gasoline, given the potential role of other factors, this experience nevertheless supports the contention that the OTAG modeling was inadequate for this particular strategy. It also demonstrates the critical role that fuel sulfur controls can and must play in any ozone mitigation strategy involving mobile sources.

Perhaps after EPA revises the MOBILE emissions model to incorporate new test data that we and the Coordinating Research Council recently submitted, and after more detailed ambient modeling occurs, a more accurate picture for the OTAG domain will emerge.

We are glad that EPA has begun to acknowledge the importance of reducing sulfur in gasoline, and it is our understanding that it plans to propose a rule on this by the end of this year. In light of this intent, the OTAG recommendation and ample evidence of the benefits of sulfur control, we believe that sulfur limits should be a key element of this SIP call rulemaking.

Our second comment concerns OTAG's recognition

that additional subregional modeling using a fine grid is needed to address outstanding critical scientific questions about the distance, magnitude and quality of the ozone transport phenomenon.

EPA apparently believes, however, that OTAG has more or less proved that ozone and its precursors travel very long distances; that this transported pollution adversely affects downwind states to a significant degree; and that a NOx-based control strategy will best mitigate the transport effect. Therefore, it feels justified in proposing up-front, across-the-board deep cuts in state NOx budgets before more definitive information can help states determine optimum budgets and control strategies.

We are troubled by the perception that EPA has, at best, misinterpreted the OTAG modeling results and seems to think that the remaining technical questions will have little or no bearing on whether the proposed strategy will actually work.

AAMA members agree with OTAG's position and view the outstanding technical issues as critical.

MR. WILSON: Your time is up. If you could conclude.

MS. SHAPIRO: We urge EPA to allow sufficient time for subregional modeling. We are depending on EPA and the

states to proceed with intellectual rigor so that we will not have to look back in ten years and regret the decisions made today.

Thank you.

MR. WILSON: Thank you.

Mr. Levine.

MR. LEVINE: Good morning. I am Jerry Levine of Amoco and I'm here to testify for the American Petroleum Institute and the National Petroleum Refiners Association.

OTAG greatly increased our knowledge of ozone transport. OTAG's modeling and air quality results confirmed several assumptions about transport and refuted others. For example, we learned that ozone transport is not a uniform condition in the eastern half of the U.S. OTAG's modeling confirmed that NOx reductions provide by far the greatest regional ozone reductions. We also learned that fuel reformulations are among the least effective NOx reduction strategies. We all recognize that fuel controls provide primarily VOC reductions, which can provide local benefits in some areas.

[Overhead]

MR. LEVINE: Mark will put a slide up which shows one of the many OTAG fuel runs. This slide was one of the very last ones done by the Midwest Modeling Center at OTAG,

and it looks at the impact of phase II RFG, which gets 6.8 percent NOx reduction throughout the entire 37-state region. You can see there is essentially no benefit. This is one of the many fuel runs that were done, all of which showed no significant benefit.

OTAG did make several recommendations, though, relative to the mobile source sector.

First, it recommended that the National LEV program be adopted and implemented. EPA has issued its final rule, and now it's time for the Northeast states and the automakers to commit their involvement.

Second, instead of recommending region-wide application of fuel reformulations, OTAG recommended that EPA analyze the role of fuel sulfur reductions relative to the performance of the fleet, and EPA is already doing that in its effort to examine the need for tier 2 vehicle emission reductions.

I would like to quote from a letter from the very esteemed Richard D. Wilson, who last month put out a letter in which he says, "EPA believes that this, the tier 2 process, is an appropriate process for resolving all gasoline sulfur questions." The letter goes on to say, "At this point we see no benefit in starting a second process specific to non-tier 2 vehicles with a different timeline."

We absolutely agree, and we will participate and cooperate with the process.

Finally, OTAG asked EPA to examine the cost and benefits of a cetane adjustment to diesel fuel. EPA is in the process of doing that. API and NPRA are participating and will cooperate in that also.

Now to the proposed SIP call. We are pleased that EPA has decided to pursue cost-effectiveness as a primary criterion in developing state NOx budgets.

Throughout the OTAG process, API and NPRA have urged the OTAG states and EPA to examine the cost-effectiveness of all fuel control measures in crafting NOx reduction strategies.

Regarding fuel controls, OTAG's data show that fuel reformulations are among the least cost-effective options. This is because it's very expensive to reduce NOx through fuel reformulations and the NOx reduced is minimal. In short, fuel reformulations were among the most expensive programs examined by OTAG, as confirmed by New Hampshire's analysis when they listed 59 different NOx control strategies and fuels were right at the bottom of the list.

We have other concerns also. For example, EPA has failed to define "problem area" and "significant impact" relative to ozone transport. EPA has not quantified the

benefits to nonattainment areas from reductions in transported emissions. The benefit of emission reductions decrease with downwind distance. I think we all recognize that. But there has been no attempt to optimize reduction strategies to improve cost-effectiveness.

Finally, EPA did not include any discussion of the fuel modeling runs in the proposed rule. These runs, as we put up on the screen, were an integral part of OTAG's modeling effort and show that fuel controls, as I've said several times now, do not provide any significant ozone transport benefit.

We also have some legal concerns with the proposed rules, some of which relate to the proposed SIP call to implement the new 8-hour NAAQS standard. We don't agree that EPA has authority to issue a SIP call based on the 8-hour standard when no nonattainment areas have yet been designated for that standard. The SIP call should be limited to the 1-hour standard.

In closing, I want to recognize EPA for using cost-effectiveness as primary guidance in preparing state NOx budgets. In that spirit, we support EPA's approach to the mobile source budget. We think EPA's decision recognizes the following concerning mobile source emissions: that they have been significantly reduced over the past

several years, and both the automakers and fuel people deserve credit for that; more controls are planned in the future; and further reductions to address regional transport are not cost-effective.

Thank you.

MR. WILSON: Thank you.

Mr. White.

MR. WHITE: Good morning. My name is Ben white, and I'm manager of environmental services for Carolina Power & Light Company, headquartered in Raleigh, North Carolina. CP&L is an investor owned utility serving approximately 1.1 million residential customers throughout North and South Carolina. We have about 5,300 megawatts of installed coal-fired capacity on our system that would be potentially affected by the NOx budget identified in the proposed rule.

Let me begin by saying that we believe the SIP call distorts the OTAG record with regard to North and South Carolina. We do not believe that OTAG concluded that additional controls for North and South Carolina were needed. In fact, the states believed that further study was necessary for North and South Carolina because the OTAG data did not demonstrate significant contribution for North or South Carolina. Thus, EPA's reliance in the SIP call on the OTAG record with regard to North or South Carolina for its

one-size-fits-all controls is misfounded, in our opinion.

Moving beyond the OTAG experience, in my remaining time let me make four points.

First, EPA should offer additional time for comment on the proposed rulemaking. Ozone formation and transport is a very complex issue, and the resolution of our nation's ozone problems will have huge cost implications. We cannot afford to make costly errors in selection of policy options to solve this problem.

The technical record needed to evaluate this proposed action is not complete. We urge EPA to grant additional time for review of the record, for completion of additional photochemical modeling, and for the preparation of comment.

Second, we look forward eagerly to offer detailed comments on several key legal issues. We do not believe that EPA can justify action on the basis of meeting the new 8-hour ozone standard. In this regard, the Clean Air Act defines an orderly process which must be followed to designate and develop plans to meet our air standards, and it is premature to define a NOx budget based on the new 8-hour standard.

Also among the key legal issues, we do not believe that EPA can, in what we believe to be a largely arbitrary

manner, group states in order to make demonstrations of contribution to ambient air quality in any downwind areas of concern. This is not supported by the Act and would largely eliminate the opportunity of individual states to manage their resources.

As a third item, EPA must look beyond 2002 as the date to achieve the emission reductions identified in the proposed rule. It's simply not possible for the states and industry to meet these budget levels in the year 2002 without risking major disruptions in electrical supply across the eastern U.S.

Lastly, we believe that EPA's SIP call should have focused solely on designated 1-hour nonattainment areas in its modeling efforts. As you are aware, no ozone 1-hour nonattainment areas exist in North or South Carolina. Therefore it's hard to imagine that emissions from the Carolinas could contribute to nonattainment in other states when we have no nonattainment areas of our own. The Carolinas are not like the northern tier of states in our meteorology or in our emission characteristics, and we should not be simply lumped with the other states to the north or west of our region.

Carolina Power & Light Company has a record of cooperating with our regulatory agencies to achieve the

goals of the Clean Air Act. We've worked with our state leaders in North and South Carolina to achieve a favorable economic climate for our citizens and for business development. We will continue to work constructively in this manner.

The EPA proposed action is just simply premature. We strongly support completion of additional refined air quality modeling studies and evaluation of the cost-effective alternative strategies to mitigate ozone formation before reaching a final decision regarding emission control strategies to address the ozone transport.

We thank you for this opportunity to comment. We will be outlining our positions in more detail before the close of the comment period.

MR. WILSON: Thank you.

Mr. White, we had some testimony yesterday about the schedule's compliance time. We had some testimony suggesting the time schedule we proposed was sufficient, and obviously you don't feel that way.

MR. WHITE: No, I don't. It could be met, but I think to do an orderly scheduling of outages needed to make the modifications to the facilities it would take more time. We believe it would take to maybe 2004 to meet it and schedule the outages such that we didn't have power

shortages.

MR. WILSON: If you could give us the underlying analysis, at least for your company, why that would work that way, it would be helpful.

MR. WHITE: We believe that the delay in time that it will take for the states to determine the amount of reductions required, to review the options available to meet those reductions, and then to schedule the outages to implement those modifications will take more time than 2002 would require for us.

MR. WILSON: Ms. Shapiro, you may have said it and I missed it, but is it your view that states should be adopting sulfur fuel requirements as part of their response to the OTAG SIP call?

MS. SHAPIRO: No. The states recommended that EPA adopt and implement a sulfur rule for the OTAG domain, which is the domain in which they were concerned. We support a sulfur limit across the United States, as you well know. In any case, I think the reductions that could be attributable to that change ought to be included in the emissions inventory for this SIP call.

MR. WILSON: I see. Thank you all very much.

The next panel is Ms. Nancy Barbour, Ms. Yvonne McIntyre, and Mr. Louis Pocalugka.

MS. BARBOUR: Good morning. My name is Nancy Barbour, and I'm director of federal government affairs for the Michigan-based law firm Dykema Gossett. I'm speaking today on behalf of SMCOG, the Southeast Michigan Council of Governments. SMCOG is a voluntary organization of local governments covering seven counties and 4.7 million people whose membership includes approximately 140 local units of government.

SMCOG is the designated lead local air quality planning agency under the U.S. Clean Air Act. In this capacity, SMCOG plays a major role in developing state implementation plans for the southeast Michigan region.

Because of the time limitations imposed for today's hearing, I will be unable to completely elaborate on all of the points SMCOG wishes to raise. A more complete set of comments will be submitted by the March 9th deadline on this rulemaking.

I would like to enumerate some of the major concerns with the proposed rule.

1. The basis for U.S. EPA's action is wrong. EPA's methodology for determining the culpability of states for significant ozone transport is scientifically flawed. Moreover, EPA's method for determining state emission budgets and emission reductions is in error because it is

based on cost of emission reductions. It should have been based on quantified benefits of the ozone reductions that would accrue downwind.

2. EPA has failed to appropriately address the issue of what constitutes significant transport. Whether one state has contributed significantly to another state's nonattainment depends in large part on the nonattainment state's contributions to its own problems. It also depends on the contribution of other source states. U.S. EPA has not considered these issues and has opted to consider virtually any transport as significant.

3. EPA ignored OTAG's finding that most ozone is caused by emissions in the nonattainment areas themselves and emissions from nearby states by proposing maximum emission reductions in all the culpable states.

4. The additional subregional modeling called for by OTAG must be allowed to occur before any reasonable, scientifically based decisions can be made about emission reduction requirements in the various states.

5. The quality and level of detail in the emission inventory data EPA used to make its proposed emission reduction budgets are totally inconsistent with all of the requirements the agency has for years imposed on the states for the purpose of state implementation planning.

EPA cannot impose one set of standards for emission inventories on the states and another on itself.

6. For all these reasons, EPA should extend the 120-day comment period in a manner consistent with discussions held at OTAG. During OTAG EPA indicated that a year would be provided for subregional modeling to occur.

Another technical concern is that the EPA has largely ignored the air quality disbenefit sometimes associated with emission reductions of nitrogen oxides. Earlier studies associated with the state implementation planning in southeast Michigan indicated that emission reductions of nitrogen oxides could quite likely cause increases of ozone in southeast Michigan. This is largely ignored in the EPA SIP call. The process EPA used for identifying culpability and apportioning emission reductions disregards the disbenefit issue. U.S. EPA should officially acknowledge the disbenefit phenomena and account for it in the emission reductions targeted in the final rule.

Finally, a policy concern. EPA's current process of dealing with ozone transport first and compliance with the new ozone air quality standard through local measures second is backward from the perspective of local elected officials. The local elected officials of southeast Michigan and the lawmakers of Michigan are being asked to

take action now to address ozone transport and will be asked again later to address local air quality.

We do not agree with U.S. EPA's claim during the rulemaking on the new national ambient air quality standard for ozone. At this time, EPA claimed the controls to address ozone transport would bring most areas into compliance with the new 8-hour standard. To date there has been no clearly defined, broadly supported demonstration that any particular mix of controls, whether local or through transport, would bring southeast Michigan into compliance with the new rigorous ambient air quality standard for ozone.

The state of the art in ozone modeling changed during the OTAG process. Models are now available and can be used by EPA and the states to help develop the information necessary to make common sense, scientifically supported decisions. Several parties in Michigan are working toward that end.

Thank you for this opportunity.

MR. WILSON: Thank you.

MS. McINTYRE: Good morning. My name is Yvonne McIntyre, Washington representative for the Detroit Edison Company, which is the electric utility serving nearly two million customers in southeastern Michigan.

Detroit Edison is willing to do its fair share to address the ozone transport issue. However, we do not believe that, based on technical information currently available, the drastic NOx emission reduction assumed for fossil-fired electric utility boilers is justified. We take this position because we feel EPA has failed to:

(1) Establish that Michigan or any other state contributes significantly to ozone nonattainment in other states.

(2) Allocate emission reduction requirements based on a state's proportional contribution to the problem.

(3) Provide adequate time for states to conduct local or subregional analyses to better define appropriate levels and timing of controls.

Detroit Edison has already taken steps to substantially reduce ozone precursors. As a system, we have been in compliance with the phase II Title IV limitations for NOx since 1996. This was fully five years prior to the year 2000 compliance date. If necessary and appropriate, additional reductions will be made to satisfy our ozone transport responsibilities.

But therein lies the crux of this issue. We question whether EPA's proposed actions are indeed necessary and appropriate.

The two and a half year study of ozone in the eastern U.S. conducted by OTAG concluded that regional NOx reductions are effective in producing ozone benefits but that the greatest benefits were realized in the subregion where the emission reductions were made. This led OTAG to recommend the need for additional modeling and analysis as the states develop their specific control strategies and ranges of utility and non-utility NOx controls for implementation in much of the OTAG region.

Unfortunately, EPA has seemingly ignored the advice to look at ranges of control and set the most stringent utility NOx emissions limitations considered in the OTAG process for all power plants of the 22 states affected by the proposed ozone transport SIP calls.

Further, EPA has allowed states only 120 days to prepare the necessary technical support to challenge the reduction requirements, and this analysis must be conducted in cooperation and partnership with other upwind and downwind states. This limited time that has been provided by EPA to accomplish this task is clearly inadequate.

EPA utilized OTAG modeling results to target the states affected by the proposed SIP call. Section 110(a)(2)(D) of the Clean Air Act, which EPA cites as the legal basis for the SIP call, which we do not agree with,

refers to one state's emissions impact on another state's air quality. There was no state-by-state modeling done by OTAG. Michigan recognized this deficiency and had supplemental analyses done to understand the state's contribution to ozone transport. The results, which were presented to OTAG in April 1997, indicated the following:

1. The elimination of all manmade emissions in Michigan did not produce widespread air quality benefits for downwind areas exceeding the 1-hour ozone standard.

2. The maximum benefit of massive reductions of utility emissions cut by 85 percent during periods of high ozone was minimal.

3. The difference in downwind benefits between implementing controls that would reduce emissions by 85 percent and those that would reduce emissions by 55 percent were indiscernible.

4. The incremental increase in cost between a 55 percent and an 85 percent reduction in utility emissions is extensive, nearly $400 million for Detroit Edison alone. In our opinion, a waste of resources at a time when there are numerous potential air quality issues to address.

These results do not support the actions taken by U.S. EPA in the proposed SIP call. Michigan concluded that an alternative approach must be utilized to establish a fair

and equitable means of addressing ozone transport.

The development of an improved source apportionment model, the CAMx model, late in the OTAG process has made this possible. CAMx, which is an ozone grid model similar to UAM-V, has the ability to track ozone and its precursors from a source region to a receptor area. This tool can be used to assess the impact of one state on an ozone nonattainment area in another.

CAMx is the foundation of Michigan's proportional responsibility approach. Once the significant contributors to an ozone problem area are established, each state's proportional share of the solution can easily be calculated. Then it is up to each contributing state to determine what emission reductions will be required to provide the necessary ozone benefit in the problem area. This approach allows a state with an ozone nonattainment area to approximate the level of ozone reduction it can expect from upwind states.

Michigan has utilized this approach with OTAG databases to determine the level of emission reduction which may be required to satisfy the state's ozone transport responsibility. Preliminary results show that emission reductions beyond those identified at OTAG level 1 would not be necessary. Again, EPA's proposed SIP call is not

supported by this analysis.

The 120-day comment period is simply too short. We believe that EPA should extend the comment period to allow states sufficient time to determine their proportion of contributors to nonattainment in other states.

Thank you for this opportunity to comment. We will be submitting detailed comments by March 9th.

MR. WILSON: Thanks.

MR. POCALUJKA: Good morning. I'm Louis Pocalujka, senior environmental planner at Consumers Energy, based in Jackson, Michigan. We appreciate this opportunity to share with you the concerns of our company regarding the agency's proposed rulemaking.

Consumers Energy is the nation's fourth largest combination electric and gas utility. We provide service to all 68 counties in Michigan's lower peninsula, including 6 million of the state's 9.5 million residents.

Consumers Energy believes that the proposed rulemaking is at best premature. It is based on faulty and incomplete information, fails to provide the affected states adequate time to review and comment, and fails to realistically consider the economic consequences relative to the environmental gain.

The proposed rulemaking relies heavily on the OTAG

process. Yet it avoids many of OTAG's key recommendations. OTAG was an extraordinary undertaking, but it was constrained by schedule and computer limitations as well as the political concessions needed to keep 37 states and their affected stakeholders at the table. OTAG was but a single step in a multistep process. OTAG deliberately avoided defining what constituted significant transport. OTAG recommended that states must have the opportunity to conduct additional local and subregional modeling in order to develop and propose appropriate levels and timings of controls. This included the ability to modify statewide tonnage budgets proposed by EPA.

Finally, OTAG repeatedly emphasized that the ozone reduction benefits occur in the near vicinity where the emission reductions were made.

The proposed rulemaking sets NOx budgets for the affected states. These budgets are based upon faulty emissions inventory data with generally poor documentation. This emissions inventory does not conform with the standards to which a state would be held in preparing a SIP quality inventory. Yet the emissions inventory is the crux of any modeling analyses that the states will use to challenge U.S. EPA's proposed budgets and controls.

The proposed rulemaking would commit the affected

states to billions of dollars in controls. Yet it does not explore culpability or significance levels. Rather, it relies on a vague and circuitous weight of evidence argument. Nor does it take into consideration the relative environmental benefits that would be derived by varying levels of controls as a function of cost. Such logic was introduced during the OTAG process.

The proposed rulemaking assumes that it is technologically and economically feasible to implement the maximum level of NOx controls on all coal-fired electric utility boilers, but it does not consider the ability to adapt new control technology to existing units. Nor does the rulemaking account for how so many units, spanning 22 states can be modified to the maximum levels of control during the period 1999 to 2002.

The proposed rulemaking does not account for such practical considerations as the limited experience in retrofitting large units with SCR technology, the limited number of SCR equipment vendors, the fact that there are no domestic suppliers for critical SCR components, the logistics of scheduling outages while still providing reliable power to the customers in 22 states, and the length of time needed to secure the necessary environmental permits and modified risk management plans at the affected

facilities.

Consumers Energy initiated an engineering review of its facilities in late 1997. This analysis, still in progress, is looking at a broad spectrum of control technologies, the ability, logistics and cost to implement those technologies at each of our individual units. This study will lead to a recommendation on what can realistically be implemented at each unit.

One thing is virtually certain. Consumers Energy will not be able to meet U.S. EPA's time frame for the targeted reductions. Our analysis will be completed in the spring of 1998, after the close of the comment period.

In Michigan we began preparing for this proposed rulemaking before OTAG reached its conclusion. Our goal was to be able to follow OTAG's lead by providing refined modeling analyses and determining a strategy that would reduce the state's contribution to transport. With that head start, we know that it is impossible to provide the necessary level of detail for comments by the March deadline. We are limited by the emissions inventory and the schedule.

The proposed rulemaking will result in billions of dollars in cost to the nation with serious ramifications to the nation's energy and economic policies. Consumers Energy

requests that U.S. EPA reconsider its position and extend the comment period. We also request that the states be given the time necessary to conduct proper refined modeling analyses so that they may adequately assess their contributions to transport, define state strategies that will provide necessary, meaningful and cost-effective reductions.

We will file more detailed written comments within the comment deadline. Thank you.

MR. WILSON: Thank you very much.

MR. SEITZ: Just one to Ms. Barbour and Mr. Pocalujka. You both made the comment concerning the emission inventory procedures that were followed here versus the emission inventory procedures that are followed by the states. I assume in your detailed comments you will cite specifically where that difference is. I don't need it today, but just make sure that your comments address that, given the process that we went through to get that. I'm a little unclear on that.

In addition, I think, Ms. Barbour, you said something about state and local areas should be given the opportunity to plan first. I need help understanding. For instance, southwestern Michigan is also part of Michigan. The issue there is that they would say Chicago needs to do

something first. So there is a certain contradiction within the State of Michigan. Could you help me understand that?

MS. BARBOUR: It's a complicated state. We will address that in our written statements. SMCOG could not be here today, and I'm helping them out by being here. I'm not the technical expert. So I'd like to be able to respond to all of your questions in writing, if we might.

MR. SEITZ: That would be helpful. Could you just touch on that point? I understand the southeastern and southwestern issue within Michigan. On one side you appear to be saying let us plan first, but on the other side you pointed to Chicago. So I need a little help there.

MS. BARBOUR: Okay.

MR. HOFFMAN: Ms. McIntyre, could you describe Michigan's modeling in a little more detail? Are you familiar with it?

MS. McINTYRE: I, as well, am not the technical expert. I'm the Washington representative. Our technical people could not be here today. So I can't go any more into the CaMx model because I am not that much up on it either.

MR. POCALUJKA: I can provide a little bit of detail if you are interested.

MR. HOFFMAN: What receptor areas is the model looking at?

MR. POCALUJKA: We've identified 12 receptor regions and 24 source regions for the analysis that we are conducting. We selected source and receptor regions that are of interest to the State of Michigan, and we have done some grouping of the Northeast states, some groupings of the southern and Southwest states; we've looked at individual impacts from particular states. We have used one of the OTAG episodes, the 1995 episode, and we intend to look at the other episodes to be sure that the results are consistent.

MR. HOFFMAN: You have 24 source regions. Not just the State of Michigan then. Are you looking at the impact of emissions from Michigan on various receptor regions?

MR. POCALUJKA: Portions of Michigan are identified as individual source regions for our interests.

MR. HOFFMAN: I see. So 24 source regions within Michigan?

MR. POCALUJKA: No. We are looking at 24 source regions over the OTAG domain.

MR. HOFFMAN: Okay.

MR. SEITZ: But then subregions within Michigan?

MR. POCALUJKA: Yes. For example, we are looking at the different situations on the west side of the state as

well as the southeast side of the state, both as source and receptor areas.

MR. SEITZ: To outside receptor areas?

MR. POCALUJKA: We are looking at it both ways.

MR. HOFFMAN: When do you expect it to be completed?

MR. POCALUJKA: We will share this information with you. We are bringing the information into the LADCO process as well, trying to integrate it into the planning process that goes into analyses that LADCO will be conducting in the future.

MR. SEITZ: I thought in your testimony you said the modeling will be done in the spring of 1998.

MR. POCALUJKA: Our modeling?

MR. SEITZ: Yes.

MR. STOLPMAN: What is the timing on the results of the model?

MR. POCALUJKA: We will have preliminary results ready within the comment period. We will continue to refine the modeling and the results.

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

The next panel is Mr. Matthew Hare, Mr. David Arthur, and Mr. David Taylor.

MR. HARE: Good morning. My name is Matthew Hare.

I'm the director of regulatory affairs for the Michigan Manufacturers Association. MMA is a membership organization of over 4,000 manufacturers, from the Big Three to the mom and pop operations. Our members employ 80 percent of the manufacturing workforce in Michigan and generate billions of dollars in our economy.

Due to time constraints, today I can't go into all the necessary details we have regarding the SIP call, but there are a very few issues that cut across all SIC codes and raise concerns by member companies, big and small.

Recent debate, and now initiatives on air quality, is one of those issues. Whether it is the new NAAQS standards, local climate change, section 126 petitions, regional haze, or now this proposal, the culmination of it all will result in a devastating impact on our manufacturing members.

I do not want to suggest that forcing Michigan to pick winners and losers through a NOx budget will result in manufacturers going out of business or pulling out of urban areas or forcing them to head overseas. I would suggest that if you implement this proposal along with the other EPA proposals, all of that, however, will probably occur.

You must not examine the impact of the SIP call within a vacuum. Rather, you must consider the totality of

your actions on Michigan businesses.

MMA, through member companies, was able to observe the OTAG process. Based on our observations and the resulting SIP call, we see little environmental gain, yet extensive economic damage.

MMA encourages EPA to allow a more accurate emissions inventory database to be created to conduct the OTAG recommended subregional modeling. We also recommend providing definitions for "culpable" and "significant." We also request that a true cost-benefit analysis be properly conducted, and the cost-benefit analysis should take into account whether it's technologically or economically feasible to implement the type of controls that are required on current and new facilities.

This proposal is based on an ignorance of the facts that show, through CAMx modeling, Michigan transport is not a significant factor in downwind areas. CAMx modeling shows Northeast ozone problems are due to their own regional emissions, modeling that shows by reducing significantly our emissions there is little to no improvement in downwind areas that exceed 124 parts per billion.

Finally, MMA requests more time to thoroughly study these and other issues. The stakes are high and your

actions should result in attainment of your goal.

Clearly, based on data, many would suffer an economic burden while your environmental goal would remain out of reach.

Thank you.

MR. WILSON: Thank you.

MR. ARTHUR: Good morning. My name is David Arthur, and I work with the firm of Dykema Gossett. I am speaking today on behalf of the City of Detroit. The City of Detroit is one of the members of the Southeast Michigan Council of Governments.

I want to start by indicating that the City of Detroit concurs with all of the comments made by SMCOG earlier this morning by Nancy Barbour. However, I need to take a couple of minutes and address some other issues of particular concern to Detroit.

Through the administration of Mayor Dennis Archer, the City of Detroit has been working aggressively with the federal government on a variety of initiatives, all of which are targeted towards revitalizing the city. Some examples include our initiatives on brownfields, the designation of parts of the city as federal empowerment zones, and more recently, our initiatives on sustainable development.

These partnerships are all pieces of a larger

puzzle which is being put together to build a strong, healthy City of Detroit. That is one reason the City of Detroit is very concerned with the proposals on ozone transport proposed by EPA.

Detroit and southeast Michigan were recently redesignated as in compliance with the very tough 1-hour standard for ozone. This was the result of many years of regulatory programs and major investment by businesses and the citizens of Detroit in pollution control measures.

The city on several occasions expressed deep concerns with U.S. EPA's proposal on a new air quality standard for ozone. Despite the city's objections, EPA moved ahead and finalized the standard.

This SIP call indicates our concerns were well founded. We cannot now move forward using extremely limited information and ask for new pollution controls from areas like Detroit to address transport. Asking the citizens of Detroit to bear the cost of these major new controls to address transport first and then to ask citizens to pay again for local controls to address the new stringent standard at a later date is poor public policy.

We are concerned that southeast Michigan has not first been given the opportunity to assess what measures would be necessary to achieve the new 8-hour standard

promulgated by EPA. All urban areas with air quality problems should be allowed to do the same. These local analyses would be the basis for areas to demonstrate that they have done all they can to achieve this new standard. They could, for instance, demonstrate that some level of controls in specifically identified areas upwind are necessary and more cost-effective than what could be done locally.

This is especially important to Detroit because earlier studies indicated that reductions of nitrogen oxides proposed by U.S. EPA may indeed result in worse ozone air quality.

Make no mistake. Air quality and a clean, healthy environment are top priorities in the comeback of the City of Detroit, but we must be reasonably sure that the actions we take will achieve the ends we seek. We simply cannot afford to come back later to redo it. This is especially important to Detroit and southeast Michigan as the home of the automobile industry. Whether locally or nationally imposed, new controls at manufacturing facilities, utilities, and on the emissions from new cars all impact both our industrial and commercial economic base.

In closing, I would like to indicate that the city is particularly troubled that U.S. EPA's proposed rulemaking

was made without complete sets of data needed to respond adequately. I hope you agree after this hearing that this is not the way we want to make environmental policy. Detroit requests the public comment period be extended, as indicated by SMCOG.

Thank you for the opportunity to comment.

MR. WILSON: Thank you.

MR. CONNAUGHTON: Good morning. My name is Jim Connaughton, speaking for Mr. Taylor. These comments are submitted on behalf of St. Joseph Light and Power Company, which is located in St. Joseph, Missouri, in the western portion of Missouri.

My remarks today are limited to one aspect of the proposed rulemaking, and that is that we question EPA's determination to include the western coarse grid portion of Missouri in the SIP call.

As you know, the modeling conducted by OTAG divided the 37 participating states into broad sections defined as part of a fine grid and coarse grid. Fourteen of the states are split between the coarse grid and the fine grid. OTAG had recommended that only the fine grid portion of those states be included in the program.

EPA, however, has arbitrarily chosen to include the entire portion of seven of the 14 split states, which

includes Missouri, in the SIP call. Seven other split states are completely excluded. EPA has offered three reasons for including entire states instead of the fine grid portions of a split state in the NOx reduction program.

First, EPA has said that the division between fine and coarse grid areas was based in part on technical modeling limitations.

Second, the additional emissions decreases will help downwind nonattainment areas.

Third, a statewide budget creates fewer administrative difficulties than a partial state budget.

I want to address each of these reasons.

First, EPA doesn't explain what modeling limitation supports the result that the whole of a split state should be included rather than the fine grid part of a state. The only explanation we have been able to obtain is that the model was based on a grid and not on state boundaries. In other words, the technical limitation apparently was an inability to model based on state boundaries.

That fact, however, does not justify requiring the coarse grid part of a state to comply with the NOx reduction program. On the contrary. Based on the information and data that has been generated to the best of our ability

through the OTAG process, the only justifiable policy choice is to include the whole state when the whole state falls within the model's fine grid, and to include only the relevant fine grid part of a state when the grid divides the state. That's the technical information we have available to us today.

Concerning EPA's second point, even if it were true that the inclusion of the coarse grid portion of a split state may help downwind nonattainment areas, that is not the relevant inquiry. The relevant inquiry is whether the coarse grid areas significantly contribute to downwind nonattainment. EPA has already answered that question in its SIP call by not including states that fall completely within the coarse grid area in the proposed program.

Finally, and also insupportable, is EPA's point that whole-state budgets create fewer administrative difficulties. Missouri Air Pollution Control Program Director Roger Randolph has stated that there are no administrative difficulties for Missouri in dividing the state between coarse and fine grid sections.

In fact, numerous parts of the Missouri SIP today already deal piecemeal with the St. Louis, Kansas City or other areas of the state. There is no reason why that same kind of approach can't be applied here.

If the alleged administrative difficulties are federal, it wasn't clear in the agency documents. EPA has not identified what any federal administrative difficulties might be.

The most telling point to be made against including the whole of a split state in the program is that OTAG itself recommended that emissions from sources in the coarse grid portion of states be exempted from the budget calculation. In other aspects of the proposed rule EPA defers to OTAG recommendations. We fail to see why EPA chooses to ignore OTAG's conclusion on this critical issue.

Finally, we agree with Mr. Randolph from the Missouri air pollution control program, who has publicly stated that the EPA proposal to include a whole state instead of the fine grid part of a state makes no sense. In Missouri's situation, EPA's proposal would produce the anomalous result of regulating western Missouri emissions because they may impact the Lake Michigan area while at the same time not regulating Iowa emissions, which are far closer to Lake Michigan. In fact, because of prevailing wind currents, western Missouri's regulated emissions would float over and mix with unregulated emissions of Iowa. This result is nonsensical and technically insupportable.

The Missouri APCP has indicated that it will be

asking EPA to accept OTAG's recommendation and include only eastern Missouri in the program.

In conclusion, we strongly urge EPA to adopt the recommendations of OTAG, the group that spent the time, money and made the effort to find appropriate solutions for this complicated problem. If EPA proceeds with the NOx reduction program, EPA should not include the western coarse grid portion of Missouri.

Thank you.

MR. WILSON: Thank you.

Mr. Arthur, on the Detroit situation, I was a little confused by your testimony. Maybe you could help or at least submit something for the record later. Our analysis, if I remember right, for Detroit indicated that with the proposal Detroit would not only stay in attainment with the current 1-hour standard but would also attain the 8-hour standard and would be eligible for the so-called transition area classification and avoid the need for additional local controls. Are you familiar with that?

MR. ARTHUR: I will comment on that briefly, but we will submit in our comments. We have some concerns about the transitional area that is identified in the final regs. Concerns about citizen suits, for instance, and what may be done about that. We will address that later. I do

recognize your point.

MR. WILSON: It would seem delaying or reducing the amount of reductions that the SIP call would achieve would put Detroit in more jeopardy vis-a-vis being designated nonattainment and being required to come up with local measures as part of a SIP call.

MR. ARTHUR: I'll make sure our comments include that.

MR. HOFFMAN: Mr. Arthur, so far as you know, will Michigan have any difficulty in completing its SIP called for within the 12-month period?

MR. ARTHUR: I don't know the answer to that.

MR. WILSON: Thank you very much for coming.

Apparently Mr. Lunan, who was on the list, canceled. So the next panel is Mr. Bruce Carhart, Mr. David Wooley, and Mr. John Paul.

MR. CARHART: Good morning. My name is Bruce Carhart, and I am the executive director of the Ozone Transport Commission. The Ozone Transport Commission, or OTC, was created by Congress in the Clean Air Act Amendments of 1990 to coordinate planning for ground-level ozone control in the ozone transport region, or OTR, an area stretching from the Virginia suburbs of Washington, D.C., to Maine.

Thank you for the opportunity to submit comments today on EPA's proposed call for revisions of state implementation plans, or SIPs, for ozone which was published in November of last year. Ground-level ozone is a major public health problem in the Northeast and Mid-Atlantic states as well as in other parts of the eastern United States. EPA's proposal therefore is a critical effort for addressing the need for reducing harmful emissions which contribute to the problem.

Since its inception, the OTC has advocated emission reduction programs for ozone precursors. The OTC has especially supported regional reductions of emissions of nitrogen oxides, or NOx. Some of the programs that the OTC has advocated are low emission vehicles and reductions of major stationary source NOx emissions through the OTC NOx Memorandum of Understanding, or MOU.

The OTC NOx MOU was originally approved by the OTC on September 27, 1994. Since that time, the mechanisms to implement the OTC NOx MOU continue to be developed and adopted by the states of the OTC, including a regional NOx emissions trading program. All OTC jurisdictions except Virginia are signatories to this MOU. We are convinced that this proactive effort by our states will provide us with substantial ozone control benefits.

We have endeavored to implement the full measure of emission reductions required by the Clean Air Act while realizing early on that those measures alone would not provide for attainment in our region. After the OTC was initiated, we began to develop programs to achieve substantial additional reductions, including the OTC NOx MOU. It is worth noting that this includes implementation of NOx budget caps and a mechanism to allow interstate NOx emissions trading.

Nevertheless, our work for some time has shown that while our efforts at attaining and maintaining health-related ambient ozone air quality standards will be effective, they will not be sufficient to meet this goal without reductions of transport of ozone and ozone precursors into the OTR.

We participated extensively in OTAG and believe the OTAG results support the need for NOx reductions outside the OTR. We periodically urged EPA to utilize OTAG results and to issue a notice of proposed rulemaking based on the OTAG data as well as other information of comparable quality.

We are pleased that this has finally occurred, with formal comments due approximately five weeks from now. We are encouraged that EPA has recognized through a detailed

review of the OTAG analysis that significant reductions in NOx emissions are necessary to address the ozone transport problem. We are actively reviewing and analyzing EPA's proposal at the same time as our midcourse evaluation of phase III of our NOx MOU for emission reductions within the OTR.

Our analysis of the proposed SIP call includes the specific methodologies used, and we plan to submit detailed formal comments by the deadline. However, we would like to make a couple of specific points at this time.

First, we need major reductions in transport of ozone and ozone precursors at the OTR boundary if we are to attain the health-related ozone standards. Air entering the OTR is frequently near the level of the health-based standards. As I mentioned, we continue to make reductions of emissions ourselves within the OTR, but we will not be able to attain without emission reductions from the outside as well.

Second, we support the SIP call process and do not want to see it further delayed. In January of 1997 the OTC called on EPA to expedite its SIP call proposals and to ensure that the emission reductions provide the largest achievable reductions of ozone and ozone precursors at the OTR boundary. The SIP call is now available for everyone's

review, and we see no reason why the SIP call cannot be completed by EPA's stated deadline of September 1998, and urge EPA to keep to that schedule.

Third, we believe that at least the level of emission reductions outside the OTR proposed by EPA are necessary as quickly as possible. We continue to technically evaluate EPA's proposal and will expeditiously analyze the information expected in EPA's supplemental notice of proposed rulemaking in March.

Analysis of both the existing proposal and the supplemental proposal may lead us to recommend specific technical methodological changes in the protocols used to calculate state NOx emission budgets. We would regard any such recommendations as technical improvements to the proposal. However, we also believe that in terms of air quality the NOx emission reductions proposed for outside the OTR at a minimum are needed for us to move to attainment and maintenance of the health-related ambient ozone standard. Technical improvements to the proposal should not inadvertently undercut the emission reductions that would lead to transport reductions into the OTR.

Fourth, we support the concept of NOx emissions trading for major stationary sources of NOx. Properly developed and implemented, we believe that a NOx emissions

trading program can cut the cost of reducing NOx emissions. We will be prepared to comment on EPA's draft model NOx emissions trading rule when it is issued.

My full statement has been submitted for the record. As I mentioned, we plan to submit detailed comments which expand on the points I've outlined here. Thank you for the opportunity to come before you today.

MR. WILSON: Thank you.

Mr. Wooley.

MR. WOOLEY: Good morning. I'm David Wooley. I'm professor for environmental and energy law at Pace University. I'm submitting testimony today on behalf of nine health and environmental groups with a large membership throughout Midwest, Mid-Atlantic, and New England states. The groups are the American Lung Association, the Appalachian Mountain Club, the Conservation Law Foundation, Delaware Valley Citizens Council for Clean Air, Environmental Advocates of New York, Michigan Environmental Council, Natural Resources Council of Maine, Ohio Environmental Council, and the Pace University Center for Environmental Legal Studies. I provided a copy of my statement to the receptionist.

I want to open with a note of appreciation for the hard work that has gone into this rule by EPA staff and the

staff of many states. You have approached the task with dedication and creativity. I know there are a lot of long hours in there, and I think it's important to recognize that.

The nine health and environmental groups that I represent today strongly support EPA's proposal to reduce ground-level ozone, acid rain, fine particulate pollution, and haze. EPA's finding of significant contribution is fully justified. The .15 pound per million Btu emission control level is reasonable and readily achievable.

As a professor of environmental law and a former state assistant attorney general with long experience with the interstate air pollution provisions, I'm confident that the agency has full legal authority to finalize this rule.

As you do so, these nine groups urge you to forcefully articulate binding regional and state-by-state caps, and adopt implementation procedures which guarantee compliance with the caps. We believe this requires an enforceable tonnage-based emission limitation method. We urge you to reject rate-based emission limitations. They cannot assure the caps will be met and they will interfere with efficient emission trading systems.

We also urge EPA to continue its effort to incorporate incentives for end use efficiency into the model

NOx trading rule. We recommend that 10 percent of allowances be set aside for assignment to energy services companies, customers of electric companies who achieve verifiable electric power savings through energy efficiency technology and services.

The nine groups do have one criticism of the rule that I will address today. The regional cap and the statewide caps are too high. Greater reductions are needed to protect health and the environment. It is a mistake to base utility sector budgets on 10-year-long growth estimates. In the history of the electric utility industry such estimates have been notoriously inaccurate.

Even if predictive economic models have improved over the years, the level of uncertainty has increased in regard to customer behavior, technology and markets. As we enter a restructured industry, there is a significant risk that the growth estimates will be too high. This will create a surplus of allowances; it will slow progress toward attainment and will lock in a level of inefficiency and retard technological innovation in the industry.

We recommend that state and regional caps be set using current power plant utilization data. This will create strong incentives for efficiency in generation and in end use of electricity. We believe that the result of this

would be to reduce the overall caps by 10 to 12 percent.

Let me make two points in closing. First, this rulemaking is only one of the steps that we expect and we will push EPA to take to reduce interstate air pollution. Seasonal NOx caps are not enough. The SCR and SNCR controls that result from these rules are likely to be turned off fall, winter, spring. We urge you to undertake a separate rulemaking to establish year-round NOx caps to protect lungs from particle exposure, ecosystems from acid shock and coastal water hypoxia.

Additional SO2 controls beyond the 1990 amendments are needed to protect lungs and lakes from acid aerosols. Controls on power plant air toxics are overdue. Your visibility rulemaking needs to be improved. Additional mobile source controls are needed at the state and federal level.

Many of these objectives could be achieved by a Clinton Administration legislative proposal which ends the exemption from new source performance standards for older, high polluting plants.

Secondly, we are very concerned about delay in promulgation of this rule. We urge EPA to finalize the rulemaking in September 1998, which will ensure that state implementation plan submittals occur in the fall of 1999,

and to have all the regional controls in place by fall of 2002 and to achieve full compliance by spring 2003.

Thank you very much.

MR. WILSON: Thank you.

Mr. Paul.

MR. PAUL: Good morning. I'm John Paul, regional vice president for the Center for Energy and Economic Development, or CEED. We represent all the class 1 railroads in the United States, more than 700 million tons of coal production, and 26 utilities with service territories throughout the country, including 12 of the SIP states. We also represent numerous suppliers of each of the major membership categories, state coal associations, and others interested in the continuation of economic coal-fire electric generation.

CEED was deeply involved in the deliberations of the Ozone Transport Commission and also participated in the Ozone Transport Assessment Group process.

The subject proposed rule, imposing a uniform emission rate of .15 pounds of NOx per million Btu across the 22-state region, should not be implemented and requires substantial modification. The OTAG recommendation for sufficient time to complete comprehensive and detailed subregional modeling should be adhered to by EPA. OTAG's

recommendation for variable control levels between Title IV and 85 percent should also be included in the SIP call.

We intend to file written comments for the record which will detail our concerns and recommendations. In the brief time allotted to us today, we can only address a few matters of interest.

CEED wishes to endorse the comments by Mr. Trisko on behalf of the UMWA, which we have closely collaborated with during both the OTC and the OTAG process. In the interest of time this morning, we refer you to the six subject areas set forth in Mr. Trisko's statement, which clearly set forth reasons why the proposed rule as presently constituted is flawed and should be substantially revised.

CEED also is a member of the Midwest Ozone Group and wishes the record to reflect our endorsement of the testimony presented by Mr. Flannery yesterday on behalf of MOG. It is also inconceivable to us that EPA would attempt to propose Draconian measures on utilities located in attainment areas while basically ignoring controls on many of the areas that are in nonattainment.

It is likewise inconceivable that the proposed rule, which is not founded, we do not believe, on persuasive science and which would require billions of dollars of capital investment and billions of dollars in O&M costs, is

not intended to achieve attainment in such areas as the Northeast. In fact, referencing some statements by the northeastern states in support of their 126 petitions, it appears that this rulemaking perhaps is an effort to deal with the competitive issue through an environmental rulemaking.

OTAG modeling justifies the conclusion that the myth of long-range transport, which was in fact the focus behind the creation of OTAG, has been debunked. When modeling demonstrates that 75 to 90 percent of the downwind ambient air benefits occur within 100 to 250 miles of the area subject to control, it's clear to us that the Midwest and the Southeast utilities are not significant contributors to the nonattainment problems of Washington, New York, and Boston.

OTAG recognized that there were regional differences in transport and impacts associated with that transport from differing sources. There need to be variable reduction requirements based on specific subregional modeling. One size does not fit all. We need to begin controls that are reasonable, economic, and a justifiable level, continue to monitor the progress and the problems, and then determine which if any further controls are required. In essence, what we need is a 2-step process

similar to that which occurred and is occurring in the OTC.

CEED strongly endorses and will actively encourage collaborative efforts among states in appropriate geographic areas to implement a 2-stage program, the one I previously described. In that regard, I wish the record to also reflect that CEED is a member of the Alliance for Constructive Air Policy, and we endorse the comments by Mr. Wyman on behalf of ACAP.

We thank you for the opportunity to offer comments on the rule. We believe the rule should be substantially revised, and we would be pleased to work with the agency in that regard. Thank you.

MR. WILSON: Thank you. Mr. Paul, one question for you. You commented that the proposal requires attainment areas to get reductions when we are ignoring reductions in nonattainment areas. Could you expand on what you mean by that? We have an outstanding call where the nonattainment areas are required to show what additional reductions they need to reach attainment by this April.

MR. PAUL: Two things. One, obviously a lot of the areas in the Midwest and the South which are attainment areas currently are being asked to impose up to 85 percent reduction. I believe Mr. Flannery's testimony went into great detail that matters that should have been taken up by

the northeastern states in fact have not been taken up, and as far as I understand, this SIP call would not require them to do the things that they have been unwilling to do at this point in time.

MR. WILSON: They would be required to take whatever steps are necessary to achieve the emission reductions they need for attainment. Obviously these two are sort of on the same path. They are claiming they can't achieve attainment just with reductions from their own areas; they need reductions from outside; but obviously some of them need additional reductions within their own area as well.

MR. PAUL: I understand that, but I believe David's testimony indicated that they were required in the past to do things which they have not done up to this point in time. I will be happy to elaborate on that in the written comments if you would like.

MR. WILSON: That would be helpful.

Mr. Carhart and Mr. Wooley, I wonder if you all have comments on the 2-stage proposal that Mr. Paul mentioned and that was discussed earlier.

MR. CARHART: I can't comment specifically on the proposal since we haven't had a chance to look at it. However, we are open to the idea of a phased approach as

long as it doesn't delay the implementation of the SIP call as outlined by EPA.

MR. WILSON: I'm not sure I understood that since the phased approach by its very nature seems to have a -- you didn't hear it. As I understand it, it's basically a 55 percent .35 by 2004 with some yet to be determined additional reductions to be achieved by 2007.

MR. CARHART: That would clearly be a delay of what EPA has proposed, and we would not support any kind of schedule like that.

MR. WILSON: Mr. Wooley.

MR. WOOLEY: We would strongly oppose it. I will provide supplemental written comments on that topic.

MR. WILSON: That would be helpful.

MR. STOLPMAN: Mr. Wooley, we have heard before about the growth rates that EPA used in its model. I think you were critical of the growth rate assumptions that we employed. If you have specifics on that that you could provide for the record, I think that would be helpful.

MR. WOOLEY: Very well. I'll do that.

MR. SEITZ: Just one clarification to your comment on coming in and amplifying on the Northeast reductions. I think yesterday Mr. Trisko was mentioning implementation of I&M programs in the Northeast as the issue that the

Northeast has failed to do. Given that this is not an attainment SIP call, but a transport SIP call, I'd like you to look at, given that they implemented those programs --

MR. PAUL: That they have implemented them?

MR. SEITZ: We are going to hold them to those reductions, and the agency, as you know, has clocks ticking against some of those states for that failure. They would argue they still can't reach attainment if they do that. Is it your position that that still is their problem? If you could address that or comment on it now.

MR. PAUL: I can answer you very briefly. I'll be happy to put that in our written comments. Our answer would be that, yes, we do believe it's their problem, that even if they implement that, it's not clear to us, because we don't know whether in fact it will, but our position is that certainly those utilities in the Midwest and the Southeast are not the significant contributors to those downwind areas of New York, Washington, and Boston.

MR. SEITZ: I assume that's with the exception of the Philadelphia or the Pennsylvania issue with Commissioner Seif yesterday.

MR. PAUL: With Pittsburgh?

MR. SEITZ: When I look at Pennsylvania, I look at it as one commonwealth. You're saying Pittsburgh only.

You've split Pennsylvania in two, I assume.

MR. PAUL: I would split it in two as we did in the OTAG modeling and deal with Pittsburgh.

MR. SEITZ: Thank you.

MR. WILSON: Thank you all very much.

The next panel will be Mr. Joel Bluestein, Mr. Alan McConnell, and Mr. James See.

MR. BLUESTEIN: I'm Joel Bluestein. I represent the Coalition for Gas Based Environmental Solutions. My comments this morning will focus specifically on the design of a cap and trade program for control of emissions from large sources.

We believe that a properly designed cap and trade program is an effective approach to control emissions cost-effectively, but it must be designed and implemented in an environmentally beneficial way. The cap mechanism provides a reliable limit on emissions as opposed to a rate approach, which gives less surety of controlling the emissions, but the cap must be based on realistic baselines, must not be inflated, and must not be allowed to creep during implementation.

In addition, the trading system should be designed to encourage good environmental results, which seems obvious, but nevertheless, I think it needs to be addressed.

It should not discriminate against clean plants or subsidize high emitting plants or cause market distortions that favor high emitting plants, which will cause increased costs of NOx control or increased emissions of NOx or other pollutants.

In particular, there needs to be consistency between the states in the operation of trading, particularly in a restructured electric market. We need to make sure that differences in environmental regulations do not cause market distortions that cause increased emissions or costs. This view has been reinforced recently by a letter from the NESCAUM air commissioners to EPA stating the need for consistency between the states and environmental regulation of utility emissions.

We believe states do need flexibility in setting the specific caps for different sectors in their states. However, within those sectors the approach to allocation and trading needs to be consistent in order to allow the market system to operate properly.

It needs to be fair to encourage clean generation and the development of new clean generation sources that will be required if we are going to meet our long-term air quality goals. It's very important for NOx trading. I think it's critical for a potential carbon trading program

that may come in the future.

Within the basic structure of a cap and trade program one critical factor is the initial or recurring allocation of allowances. The allocation of allowances distributes the wealth of the program. If the idea is to let the market determine the most efficient way of meeting the cap, then we need to do the distribution in an evenhanded way and let the market function rather than predetermining the outcome.

In effect, the government is distributing a national resource -- clean air -- in return for electricity that is generated. Therefore the allocation should be linked to the product, the electricity that is generated, and no source should be arbitrarily given greater pollution rights to generate the same kilowatt hour. Therefore allocation should be based on electricity generated, the output. We can then let the allowance market operate in conjunction with a restructured electricity market to find the most efficient solution.

One idea that is particularly troubling is the idea that new clean sources do not need allowances or don't need them as much as old, high emitting sources, which I think is incorrect and bad environmental policy. It implies that the new sources have somehow magically gotten clean at

no cost and therefore don't need allowances. In fact, any new plant and any old plant will both have to spend money to control NOx.

The only difference between one that installed technology or mixed fuel choices last year versus an old plant that may do it in 2003 is that one is clean now and one has been emitting for a long time. Both will have costs to bear. Once the old plant installs technology or makes fuel choices, one could say that it does not need allowances anymore, but in fact it will have them, and it will have a market advantage as a result.

The new plant may have spent just as much to meet BACT or LARE without the benefit of trading but will get no support for those costs from the trading program. This is rigging the market rather than let it function on its own, and it is a policy choice that creates a disbenefit to the environment.

Therefore we believe that allowance markets should be established based on equal allocation of public resources for equal benefits, the output of electric generation, and there should be no arbitrary judgment about who deserves allocations. The EPA should require that the cap and trade program, if it goes forward in all states, be based on output-based allocation of allowances.

I will submit written comments at a later time, and I will be glad to answer any questions.

MR. WILSON: Thank you.

Mr. McConnell.

MR. McCONNELL: Good morning. My name is Alan McConnell, with the law firm of Kilpatrick Stocton in Raleigh, North Carolina. I am glad to see that some of my neighbors from North Carolina are on the panel this morning.

Today I am speaking on behalf of North Carolina Citizens for Business and Industry, or NCCBI. NCCBI is composed of approximately 1,800 member companies and is North Carolina's largest nonprofit, nonpartisan business association. NCCBI represents virtually all segments of North Carolina's business and industry, both large and small.

Our organization advocates sound fiscal policies by government and supports initiatives which maintain a healthy business climate and lead to diversified economic development. We believe that environmental regulations must be science-based, cost-justified and risk-managed. We are pleased to be able to speak to you today regarding the agency's conclusion that North Carolina is a significant contributor to ozone nonattainment across state boundaries, and on your proposed requirement that North Carolina

implement new measures to mitigate the interstate transport of ozone precursors.

NCCBI stands by its record of being absolutely committed to whatever environmental measures are truly necessary to protect the health of both North Carolina citizens and the citizens of other states.

We are deeply concerned, however, that while North Carolina industry readily supports regulation that will serve to improve the health of our citizens, EPA has not come close to meeting its burden of clearly demonstrating that its proposed strategy to reduce ozone concentrations in North Carolina and other states will be achieved through the proposed SIP call.

In short, EPA's proposal is technically flawed, legally deficient, and highly discriminatory against North Carolina. Because of the extreme economic impact of this proposal on our state, it's imperative that EPA put forth the best scientific and legal analyses possible to support these regulations. This has not been done.

First, the SIP call proposal has no sound technical basis. As EPA is aware, North Carolina participated in every step of OTAG. As the agency is also fully aware, we have the most sophisticated hardware and software for criteria pollutant modeling in the nation in

our Microcomputing Center of North Carolina. Frankly, we also have some of the very best, and I would argue the best, photochemical modelers in the nation in our state's Division of Air Quality.

Using these resources, modeling performed in North Carolina demonstrated no significant long-range transport of ozone precursors from North Carolina to the Northeast, to the Great Lakes, or south to Georgia. As these exercises have demonstrated, North Carolina is not contributing to any current 1-hour ozone nonattainment areas. However, EPA is ignoring these data.

The agency is ignoring other data. The OTAG exercise clearly demonstrated that ozone precursors are not transported over long distances and that in fact ozone nonattainment is most frequently a highly localized phenomenon. The greatest contributor to 1-hour ozone nonattainment areas such as Pittsburgh, Baltimore, D.C. and Atlanta are sources in and immediately around each of these particular nonattainment areas. Yet EPA's proposed SIP call and emissions cap for North Carolina will mandate emission reductions from major stationary sources regardless of their distance from ozone problem areas.

In fact, the transitional classification offered by EPA to the states is a strong inducement to regulate only

large combustion sources in order to avoid the pain of truly addressing this highly localized problem. Clearly, North Carolina must develop a strategy to comply with the new 8-hour ozone standard via a combination of transportation measures, mobile source controls and the regulation of major stationary sources. The transitional classification won't help North Carolina and should be abandoned by EPA.

As many have said before me, the proposed SIP call is also legally flawed. EPA illegally uses the new 8-hour standard to justify the state emission caps. Even though there are currently no nonattainment areas in North Carolina -- as you know, the 1-hour standard has been revoked -- the agency projects where 8-hour ozone nonattainment areas will be. The bottom line is that neither EPA nor North Carolina know or are currently required to know what areas will fail to attain the 8-hour standard.

Any caps must be based solely on achieving compliance with the 1-hour standard. It's a basic tenet of Title I that areas must be designated nonattainment before controls are imposed.

The transitional classification is not provided for under the Clean Air Act; the state emission caps are not provided for under the Clean Air Act. As an agency that spends more than its share of time before the D.C. Circuit,

surely you recognize there are a host of legal problems here.

I will be glad to answer questions.

MR. WILSON: Thank you.

MR. SEE: Good morning. My name is James See. I represent the Tristate Industrial Network and am here to voice concern of TRINET regarding EPA's proposed NOx SIP call.

TRINET is a business group representing the metals, petroleum, natural gas and utility industries located in the Ashland, Kentucky, Ironton, Ohio, and Huntington, West Virginia, tristate area. Our group was originally formed to respond to the need to develop an attainment SIP to address the moderate nonattainment for ozone that existed in our region, and we are pleased to report that the control strategies developed have been very effective.

Significantly, through the development of local control programs and careful monitoring of ambient air quality, EPA redesignated the region to attainment. Soon after EPA changed the area's designation to attainment, EPA initiated the OTAG process leading to the proposed SIP call that is before us today.

We find it particularly troublesome that we have

proceeded in good faith and worked with the state agencies to clean up air quality in our tristate region only now to be asked to do it again.

If we were causing the air quality problems of the Northeast, further controls on our sources might be one thing. However, the data indicate otherwise. Modeling runs performed by OTAG demonstrate without any doubt that regulating Midwest sources will not move the Northeast towards attainment.

We believe there to be several conclusions and recommendations of OTAG that can and should guide us in our search for ozone attainment.

First, OTAG tells us that ozone benefits are greatest near the sources where emission reductions are being taken.

Second, OTAG urged that further analytical work be done to determine which sources need to be regulated and to what extent.

EPA's proposed SIP call fails to satisfy either of these critical recommendations.

The proposal is not supported by more refined modeling or analysis. Neither does it make any effort to determine whether imposing controls on any sources or group of sources will achieve ozone attainment. By a uniform .15

emission rate for all utility sources in the states, EPA has acted in a manner that is inconsistent with OTAG utility recommendations which called for utility controls to vary across the OTAG domain in a range from no new controls to 85 percent in others.

EPA's proposal violates OTAG's recommendations in several ways.

OTAG urged that states be allowed 12 months within which to conduct modeling. However, EPA would have all this be done by March 9, 1998, except for certain technical data.

OTAG urged a range of controls that would vary geographically. However, EPA's proposal is based on a single emission limit that goes beyond the range of OTAG's recommendations.

OTAG premised its recommendations on the basis of the 1-hour standard, not the 8-hour standard. EPA's proposal is made even though OTAG's episodes and analysis are not appropriate for the 8-hour standard and no nonattainment areas for the 8-hour standard have been designated.

OTAG's goal was to address transported ozone in the context of attainment and maintenance of the ozone standard. However, EPA's proposal seeks only to mitigate regional emissions without regard to whether these

reductions, even in combination with other measures, will allow the ozone standard to be achieved.

OTAG's recommended utility reductions were linked to 1990 emission rates and did not call for emissions to be capped. However, EPA's proposal is tied to 1995 emissions and is framed in such a way that it does create a cap.

Finally, OTAG recommended that a control strategy for utilities be set in a manner that would encourage trading. However, EPA's designed emission rate of .15 is so restrictive that there is no opportunity for trading.

EPA is under no court order to finish this rulemaking by the fall of 1998 or any other deadline. EPA should take the time to follow OTAG's recommendations and do the SIP call correctly. It was TRINET's experience during its effort to develop the tristate air quality solution that it was essentially to identify the best reduction strategy for the local air quality issues at hand. EPA is urged to give appropriate consideration to the merit of developing a subregional strategy that is sensitive to actual compliance.

Thank you.

MR. WILSON: Mr. See, a couple questions. You mentioned that you thought OTAG had concluded that the utility limit should vary across the region. I don't recall that. I know they concluded that the utility reduction

should fall within a range, but I don't think they concluded one way or another whether that should be a limit that was the same across the region or vary across the region. Could you be more specific on the basis for your comment?

MR. SEE: We will be glad to address those in our written comments.

MR. WILSON: Also, you mentioned that you didn't think there was any room for trading because .15 is too stringent. We had other testimony suggesting that wasn't the case. If you could be more specific in your written comment as to why you think that is true, it would be helpful.

MR. SEE: Be glad to do that.

MR. SEITZ: A quick one for Mr. McConnell. You put a lot in there in terms of transitional and everything else in your testimony. Just to make sure I understood it, and if I didn't, if you could clarify it in your written statement, it would be helpful.

First, I understood that with respect to the 1-hour standard only, your position would be that North Carolina does not significantly contribute. That's one part I heard.

MR. McCONNELL: That's correct. Mr. Seitz, I would say it does not contribute at all to any existing

1-hour nonattainment area.

MR. SEITZ: I'm assuming on the 8-hour standard, given that even if you get to the point that legally the D.C. Circuit allows us to do it, you would say that North Carolina does not contribute to anyone but themselves on an 8-hour basis, and in fact that you would recommend to the State of North Carolina that they opt for the traditional way of doing business under the Clean Air Act. That's what I'm hearing. I say that in light of North Carolina, which I believe has publicly stated that they've got a large number of areas they think will be nonattainment.

MR. McCONNELL: It's unfortunate that North Carolina didn't testify before you yesterday. They do have modeling data that have been generated that indicated, looking at the 8-hour standard, there may be some effect north of our state, in Virginia. But that is it. Nowhere other than southwest Virginia.

MR. SEITZ: Back to your testimony, you covered two issues on the 8-hour standard. The first one was the legal issue. I heard that. The second issue was given that we got to an 8-hour standard impact, I would like you to specifically address, if you could in your written comments, whether or not the transport issue needs to be addressed either within or across the state lines. I don't need it

today.

MR. McCONNELL: We'll be glad to do that.

MR. STOLPMAN: Mr. Bluestein, you are a proponent of using output as the basis of allocation. Could you address whether that means non-direct emitting producers of electricity such as hydro, renewables or nuclear? Do you intend that those receive allocations? Would that be the intent of your testimony?

Secondly, would you include in that energy conservation and efficiency measures to the extent that those are measurable as well?

MR. BLUESTEIN: Sure.

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

The last two witnesses we had scheduled for this morning are Commissioner Robert Shinn and Mr. David Hawkins.

MR. SHINN: Good morning and thank you for the opportunity to comment on the proposed regulatory action. My name is Bob Shinn. I'm commissioner of the New Jersey Department of Environmental Protection, and today I am speaking in two capacities.

First, I am representing the State of New Jersey. The air quality of New Jersey is impacted by regional transport of air pollution. Additionally, air pollution generated in New Jersey impacts air quality downwind of our

borders.

Secondly, I am speaking as chairman of the Ozone Transport Assessment Group's Modeling and Assessment Committee. As you know, OTAG was commissioned by U.S. EPA and the Environmental Council of States to understand and define the nature and extent of regional transport of ozone air pollution.

The OTAG commissioners were also charged with the responsibility to recommend to EPA regional and local control measures to reduce ozone precursors, VOCs, and more importantly, NOx. This long process resulted in a set of recommendations based on scientifically sound models that when implemented in conjunction with the SIP call will minimize the transport of precursors of ground-level ozone and will make the ambient air quality standards for ozone achievable not only in many areas of the eastern portion of the United States, but also in the Midwest and Southeast regions.

I am therefore pleased that EPA has incorporated the OTAG recommendations into the proposed ozone transport SIP call. I look forward to the day when ambient air quality standards for ozone are achieved in New Jersey and throughout the high ozone impact areas of the entire United States.

The OTAG has reinforced to me what a lot of us already know: follow the scientific information and proceed on what we know, not what we don't know, and OTAG has demonstrated that we know quite a bit about ozone.

For example, first, our inventory work group compiled the best regional NOx inventory we ever had, and it's on a Web site. It's clear that a sharp NOx emissions gradient exists from west to east, and the highest source emission regions coincide with prevailing winds, and as a result, emissions from these regions are transported downwind to receptor regions.

Secondly, our modeling work group, using the best photochemical model available, has shown it to be clear that NOx emissions are the prime precursor pollutant in the regional transport phenomenon, and that reducing NOx emissions will have the most favorable regional impact on reducing ozone downwind.

Thirdly, our air quality assessment work group has shown that prevailing wind directed transport is a common phenomenon in the summertime and that transport is likely to occur at a far greater extent and frequency than the modeled episodes predict.

This weight of the evidence from all disciplines in the scientific community has made a major contribution to

the state-of-the-art knowledge, and I was very happy to be a part of that process.

The New Jersey Department of Environmental Protection supports the proposed ozone transport SIP call. The regional NOx emission reductions are critical for attainment of the national ambient air quality standards for ozone in New Jersey, and certainly in the nation.

In order to meet the air quality standards within our state, we are continuing to implement strict emissions reduction strategies. However, these efforts will be undermined both from the standpoint of our air quality and our credibility if the transport of air pollution into the state is not also addressed.

New Jersey Department of Environmental Protection is committed to the strategies and level of emission reductions called for in New Jersey and in the ozone transport SIP call. We have already proposed a NOx budget rule which will go well beyond the Ozone Transport Commission (OTC) Memorandum of Understanding agreed to by the 11 OTC states and Washington, D.C.

These proposed emission levels are inconsistent with both the result of the OTAG process and the U.S. EPA proposed SIP call budget. We have proposed this rule to demonstrate that there is a strong local component to ozone

formation as well as the protection of our downwind neighbors. Therefore, NJDEP would be very concerned if the goals of the SIP call were compromised or if the stringency of the emission reductions were to be relaxed.

NOx budgets are built upon regional inventory and not on any one state's inventory. The budget cannot be compromised in any one state without compromising other states. U.S. EPA must stand firm on the regional budgets to allow individual states the ability to assure its residents of a future that includes clean air.

Finally, the New Jersey DEP supports EPA's efforts to develop a model NOx cap and trade rule for states to use as a means of implementing the called for emission reductions. This cap and trade approach has the greatest potential to optimize the cost-effectiveness of emission reductions.

New Jersey DEP commends EPA for extending the opportunity for everyone to participate in the development of the supplemental rule slated to be proposed next month. We eagerly lend our support and resources to the effort, and I want to thank you for extending the effort to develop a model, which should reduce the time and effort individual states will need to implement this program. This rule is consistent, which is designed to achieve the emission

reductions that are desperately needed for attainment with the Clean Air Act standards.

Thank you.

MR. WILSON: Thank you.

Mr. Hawkins.

MR. HAWKINS: Thank you. I'm David Hawkins from Natural Resources Defense Council. I guess, like Commissioner Shinn, I'm wearing two hats today. First as an advocate for NRDC, a citizen membership organization, and second as the father of three kids who would like to see them grow up to breathe clean air before they get to be as old as I am.

I'd like to make four points after first thanking the agency for taking a very important public health protection step in moving forward with this SIP call.

The first point is it's time to end the delay. There have been arguments that this proposal is too much too soon. I've given you a time line of the last 30 years of Clean Air Act implementation. I think the facts prove otherwise. The history of clean air implementation is that we've done too little too late.

And we've done that because every time cost-effective, feasible measures have been proposed, too often we have listened to arguments from the operators of

those sources that instead of applying those controls and implementing them, we should spend more time evaluating additional studies. Well, I am here to urge that we stop that. We've seen that movie too often; the script is mediocre; and no matter how many times we replay it, the ending is always the same: millions of people left breathing dirty air.

The second point I'd like to make is that the .15 pound performance standard is a reasonable, feasible and necessary basis for establishing a regional cap on electric generators. The report that NRDC did along with Public Service Electric and Gas, which I have distributed, demonstrates that this is a cost-effective strategy, and that the additional benefits it provides in terms of reducing high ozone levels as well as many other environmental and public health benefits are very large and very large relative to the cost of different stringent levels of performance standards. This is an achievable performance standard. It should be the basis for the regional cap on that sector.

The third point is that we need true caps. The agency's proposal takes comment on a variety of ways in which states could implement their caps. We will submit that these have to be done in ways that give a guaranteed

security that the emissions are in fact capped. Specifically, we oppose the idea of using emission rates by themselves as a basis for seeking approval of compliance with the SIP call. That is not an adequate way of assuring that a state lives within its cap.

In particular, a mixture between the states where some states have caps and some states have emission rates which they seek to have approved could lead to a situation where you have significant increases. You could see a situation where a state that was losing its share of the electric generating market implemented a cap and a state which was increasing its share of the electric generating market implemented a rate-based system, and you would wind up being on the wrong side of the ledger environmentally in both of those states.

The fourth point I would like to make is that the program needs to incorporate protection against peak day ozone problems. Unfortunately, there is a correlation between high ozone levels and levels of electric generation.

There also will be an economic issue associated with running electric generators harder on those days, and indeed there could be an economic incentive to dial back on some end-of-the-stack controls like SCR in order to capture a marginal share of the market on those days. So you could

wind up with a situation where the seasonal cap simply wasn't an adequate basis for protecting against peak ozone levels because it was cheaper to consume allowances on those days that were available from the seasonal cap rather than operating even installed controls at their maximum efficiency. That should be designed against, and we will urge that it is so.

Thank you for this opportunity to testify. I'd be happy to answer your questions.

MR. WILSON: Thank you.

I don't know if you were here earlier to hear some of the other proposals that have come up, but do either of you have comments on the 2-stage proposal that a number of people have supported? Do you know what it is?

MR. SHINN: I wasn't here.

MR. WILSON: I think the 2-stage proposal is basically a .35 or 55 percent reduction in 2004 with a subsequent reduction to be achieved by 2007 and to be determined based on subregional modeling that would occur over the next several months.

MR. SHINN: Not knowing the specifics of the proposal, from a general perspective, we spent a lot of time with the dates in the Clean Air Act and the OTC NOx MOU, which proposes a 65 percent reduction in 1999, and in our

proposed rule a 90 percent reduction in 2003. So we've gone really beyond the 85 percent standard that is across the board.

I guess the point from our perspective, if we hope to reach attainment, we not only have to control transport, but we have to implement just about to the maximum extreme every strategy that we can implement in New Jersey. Obviously a lot of them affect individuals and aren't easy to implement. To name a few, I&M, trip reduction, oxy fuel. You can draw a big crowd in a short period of time with any one of those issues, but each is important to our strategy.

In New Jersey we have more people per square mile and more cars per square mile than any state in the nation. So I'm not going to sit here and tell you we don't have to do anything to set control of transport. We have to do both. We have to do both. We have to control transport and implement every strategy in the OTAG recommendations that we can to the maximum extent possible.

But if that was all we were doing, local strategy implementation, we wouldn't have a prayer of meeting the existing standard, let alone the proposed standard. As an example, the 1988 episode at a monitoring station in Trenton, which is right on the Delaware River, registered 160 parts per billion in the 1988 episode. If you've got

wind delivered 160, how do you meet 120, let alone 80?

Obviously there has to be transport reductions to lessen that incoming ozone standard. Last summer we had a whole series of violations, probably ten, or maybe 11. I forget what our number was, but it was significant. It's going to be one of those episodes that is going to be added to 1988, 1991, 1993 and 1995, and now we are going to have a 1997 episode that was really significant for ozone. It just reminded us that we have to implement the strategies that we are talking about and determined in OTAG, and we have to implement everything that we are doing locally.

MR. HAWKINS: I heard the proposal, and we oppose it. It's really the same old argument, maybe with a '90s dress on. Instead of saying "we argue you should do absolutely nothing until we study more," a proposal is put forward which is the functional equivalent of almost absolutely nothing more. You've got to remember that the coal-fired power plants are already subject to emission limits of .5 or tighter under section 407 of the Act. When you include the other generators such as natural gas-fired generators that are well below these levels, the .35 that is being offered up may be literally nothing better than what compliance with section 407 would produce. I haven't done the analysis, but it wouldn't surprise me if it's not much

more.

The real issue would then be kicked off to 2007 and some further analysis where basically people would dust off their word processors and submit the same testimony they have submitted today, which is you didn't get the inventories right, you should do more modeling, whatever regional group you assemble to do this thing had different recommendations, and you should stop, rethink, slow down, and here, we have another proposal to sell you.

We have analyzed in the paper that I have provided you the differences in a .15 versus a .25, and as that paper points out, a .25 standard gives two-thirds more emissions of NOx from the electric utility sector than the .15 pound standard. It results in significantly more areas experiencing significantly higher ozone levels than does the tighter standard. Obviously these conclusions would even provide a worse comparison with a higher limit like .35 as a basis for any kind of near-term action. So we do oppose it.

MR. WILSON: One other area I would be interested not necessarily in comments now, although you are welcome to do it, but for the record and for others, too. One of the other issues that has been raised is looking in this SIP call at both the 8-hour and the 1-hour standard. Some suggest we only have the authority to look at the 1-hour

standard. I would be interested in comments for the record on that issue.

MR. SHINN: Just from a local perspective, we have our hands full meeting the existing standard on a 1-hour basis. In New Jersey that's our first goal, to meet the 1-hour attainment standard. Certainly it is pretty clear from a health perspective that that's not protective of the public's health. If our goal is protection of the public health, I think clearly we need the lower standard over an 8-hour range because that's a range when the population is exposed. So I think if we are truly focused on a health standard, and I think we truly have been, that's a reason for that standard. In some areas it has different impacts on different states and different weather conditions. In some cases it's a benefit; some cases it's not a benefit.

Combined with a lower standard, I think it's fair, and I think it represents what people are exposed to. Whether you have athletes or young children exposed, exercising or playing, or whatever, or you have senior citizens outdoors, you are really looking at exposure rates over a period of time, and that's when the damage is done by exposure to ozone.

The other issue that I want to briefly mention is, sitting through these various modeling and air quality

analysis discussions and inventory demonstrations, it was clear to me -- there was a point in time when I thought the modeling from west to east was pretty much right on the money, and as we did a 37-state approach to biogenics, when we went from BICE II to the modified BICE II, it seemed to me that we started to underpredict a little bit to the Northeast. So if we are underpredicting somewhere in the area of 5 to 15 parts per billion, we are also underpredicting ozone events. So I expect to see more ozone events in an ozone type year like we had last year than the model really predicts. I think when we looked at the ambient data and the NARSTO flight data, NARSTO 95 data, we also saw similar indications.

I think there was pretty much a consensus on the modeling. We spent a lot of time on modeling to take comments in, to solve the biogenics issue, to consolidate a decision on one model in the four modeling centers. That took a significant amount of time.

I think that comment is accurate, and I think the episodes we had last summer really sort of confirmed that. I don't think we have overpredicted transport by any stretch of the imagination. I think the science will bear that out.

MR. HAWKINS: I think the argument that EPA should ignore 8-hour impacts is a good example of why the public

holds lawyers in low regard. There isn't any legal basis for it and there isn't any policy basis for that argument. The agency has full legal authority to evaluate the impacts on the standards that it has recently revised as well as the existing standards that remain in effect under section 110.

The policy argument should be obvious to anyone, and that is that we will get a variety of environmental benefits from this rule, and they are all benefits which are relevant benefits under the Clean Air Act.

As you know and as was said numerous times during the OTAG proceedings, the opponents of these programs are going to insist that we pay attention to 100 percent of the costs of achieving these emission reductions, and it is absolutely intolerable to at the same time argue that we should ignore large portions of the benefits.

There was another technical point that was made which was incorrect, and that is that it was alleged that OTAG had focused on the 1-hour standard and had not analyzed benefits from the 8-hour standard. That's not correct. The modeling analyses analyzed both 8-hour and 1-hour impacts, and what it pointed out was that the broad regional reduction strategy was very robust in terms of providing persistent benefits. Strategies that helped address 1-hour peaks also helped address the 8-hour persistent episodes as

well.

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

As I had predicted earlier, the folks who were scheduled to testify this afternoon for the most part aren't here. So we'll break now for lunch and start up again at one o'clock. Hopefully, the people will be here and we'll probably conclude within roughly an hour at that stage.

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

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

[1:05 p.m.]

MR. WILSON: The next panel is Mr. Jeff Gleason, Mr. David Straus, and Mr. Bruce Craig.

MR. GLEASON: Good afternoon. I'm Jeff Gleason, deputy director of the Southern Environmental Law Center. SELC is a regional nonprofit environmental organization. We are based in Charlottesville, Virginia, and Chapel Hill, North Carolina. We work on energy and air issues in the 6-state region of Virginia, North and South Carolina, Tennessee, Georgia, and Alabama.

I'd like to stress the following three points in my brief comments today.

First, ozone transport is more than a Midwest/Northeast problem. It is a problem that impacts the Southeast as well. The regional NOx reductions encompassed in EPA's proposed rule are essential to achieving ozone attainment in the Southeast and will produce direct benefits to the citizens of the region.

Second, achieving attainment of national air quality standards will require the cleanup of the nation's outdated coal and oil fired power fleet, a significant portion of which operate in the Southeast. We support EPA's proposal to establish a regional NOx cap based on an assumed

emission level of .15 pounds per mmBtu as an important step towards this goal.

Third, while we support the concept of a NOx emission cap that underlies EPA's proposed rule, the cap should be based on 1997 actual emissions, not on 2007 projections based on uncertain growth projections. Moreover, EPA should stick to the proposed 2002 compliance schedule rather than the proposed extension of the deadline to 2004.

Although OTAG and EPA's proposed SIP provisions in response to the OTAG findings have widely been portrayed as never to address ozone nonattainment in the Northeast, OTAG modeling results demonstrate that southeastern states will benefit directly from EPA's proposed SIP provisions as well.

High ozone periods in the Southeast typically correspond to stagnant weather patterns and low wind speeds. These stagnant conditions tend to keep ozone precursors within the region. Thus, it has been argued that reductions in NOx emissions in the Southeast will have little impact on ozone attainment in the Northeast.

Regardless of potential benefits to the Northeast, however, it is clear that region-wide NOx reductions will produce benefits in the Southeast. For example, OTAG modeling has shown that NOx reductions in Alabama and

Tennessee will reduce ozone levels in metropolitan Atlanta, currently classified as a serious nonattainment area.

Likewise, NOx reductions in West Virginia and elsewhere will lower ozone levels in northern Virginia, the region's other serious ozone nonattainment area.

These NOx reductions will also reduce the number of hours citizens in southeastern cities breathe unhealthy air, which is typically two to three times more hours a day during periods of high ozone than citizens in northeastern cities.

Finally, the same ozone precursors that are causing unhealthy air in our cities are also causing harm to the region's mountains and rural areas. Ozone pollution in the southern Appalachian Mountains, including the Great Smokey Mountains National Park and the Shenandoah National Park, have required the issuance of health warnings on a number of occasions in recent years.

This pollution has also been found to cause leaf damage and growth loss in trees and other native plants at high elevations and growth loss in loblolly pines at low elevations. Loblolly pines are an industry that cover approximately 60 million acres in the Southeast and contribute approximately $4.5 billion to the region's economy.

By reducing NOx emissions from power plants, EPA's proposed rule will also help to address these problems. As much as 40 percent of the Southeast NOx emissions come from coal and oil fired power plants. TVA and the Southern Company are the first and third largest emitters of power plant NOx in the country. Duke Power is the sixth largest. Most of these NOx emissions come from pre-1980 power plants. For example, the 12 most polluting plants in the Southeast contribute 44 percent of the region's NOx coming from the utility sector while representing only 17 percent of the region's generating capacity.

It is clear that achieving the nation's air quality objectives, including attainment of federal ozone standards, will require a significant reduction in pollution from these sources. We support a regional NOx cap based on a control level of .15 pounds per mmBtu as an important first step in cleaning up pollution from these outdated power plants.

Although we strongly support the concept of a firm regional NOx cap that underlies EPA's proposed rule, we oppose EPA's proposal to set the cap based on projections of NOx emissions in 2007, for two reasons.

First, EPA's proposal to base the NOx cap on 2007 emission projections means that actual NOx reductions and

progress towards air quality attainment will not occur in the first five years of the program.

Second, if the growth rate assumed in setting the cap is too high, actual emission rates in 2007 and beyond will exceed the .15 pounds per mmBtu objective, thus further delaying progress. This delay in progress is unnecessary and unacceptable, particularly in light of the Clean Air Act requirement that EPA and states move towards attainment as expeditiously as possible.

I notice that my light is flashing. The last point is that we urge EPA to stick to the 2002 compliance deadline. That provides more than adequate time to take the steps necessary to meet the requirements of the rule.

MR. WILSON: Thank you.

Mr. Straus.

MR. STRAUS: Thank you. My name is David Straus, and I represent American Municipal Power-Ohio. I would like to discuss AMP-Ohio's concern with EPA's proposed rulemaking.

AMP-Ohio is a nonprofit wholesale power and services provider to the 77 municipal electric systems in Ohio and to two West Virginia municipal electric systems who recently joined. Seven of AMP-Ohio's member communities operate small coal-fired generating units, and AMP-Ohio

itself operates the Richard H. Gorsich Generation Station in Marietta, Ohio. That station in turn provides power to 47 of the municipal electric utilities in the State of Ohio.

AMP-Ohio is a member of the Midwest Ozone Group and participated in the development of MOG's comments. We fully support MOG's conclusions regarding the numerous technical, legal and procedural flaws in the proposal, but rather than repeat those conclusions here, I'd like to address three important issues today. AMP-Ohio will be submitting detailed written comments addressing these and other issues.

Municipal power generation, especially in Ohio, provides an important source of electricity to municipal electric systems, AMP-Ohio's members. It's cost-effective and it provides our member communities with a reliable source of electricity.

In addition, our municipal power generators employ many people in the communities they serve and provide additional services and benefits to those communities. Municipal power generation is also an important component of the current efforts to deregulate the electric power industry by providing member communities with alternative sources of electricity.

Most municipal power generating facilities, as you

know, are smaller in size than those of the larger regional power systems. As a result, the impact of emissions from these smaller units cannot reasonably be expected to have a significant impact on distant areas.

Furthermore, the economic impact of imposing onerous controls on smaller units will be dramatic. We recognize that EPA has excluded the smaller units in the calculation of the proposed budgets in the proposed rule. However, as proposed, the states will be free to impose the same or similar standards on municipal power generating units that are imposed on the much larger generating units in their states. Again, we will address these issues in more detail in our written comments.

However, I would like to urge the agency to take steps in whatever final rule may be promulgated to recognize the importance of municipal power generation and avoid the disproportionate impacts on our facilities.

A related issue for AMP-Ohio is EPA's failure to undertake the regulatory analyses that are mandated by the Small Business Regulatory Enforcement Fairness Act of 1996. Congress enacted that act in order to protect small businesses, small organizations, and small governmental jurisdictions such as AMP-Ohio members, collectively referred to by Congress as small entities, from

disproportionate or unanticipated adverse impacts of federal rulemaking activity.

These analyses required by the Act must be undertaken prior to publication of any general notice of proposed rulemaking and must "contain a description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impacts of the proposed rule on small entities."

Such pre-proposal analysis assures that the impacts on small entities are given due consideration. EPA's proposed ozone transport regulation will have a significant impact on all categories of small entities.

To conclude, as EPA has, that the SIP call merely imposes obligations on the 22 subject states and not on small entities is disingenuous, in our view, and is clearly contrary to the intent of Congress. The burden imposed by the SIP call will ultimately be borne by citizens, organizations, business and governmental agencies in each of these 22 states. Those burdens and the impacts on small entities must be evaluated. Waiting until the states submit implementation plans for approval will effectively prevent the kind of review mandated and contemplated by the 1996 Act.

Finally, the proposed ozone transport regulation represents government action moving ahead of the underlying science. The scientific background required to support the proposed regulation is complex and in some cases incomplete. Ozone transport modeling and analysis encompasses numerous technical disciplines and represents cutting edge modeling technology. Such modeling is difficult and time-consuming, but EPA's model is proprietary and not reasonably available to the public. Thus, to date only limited analyses have been completed and more analysis is needed.

EPA purports to base its proposal on technical work developed during the OTAG process. However, EPA has jumped ahead of the process and has effectively prevented the parties to OTAG from implementing a number of OTAG's technical recommendations, including recommendations that more refined technical analysis be completed.

In addition to moving ahead of the OTAG suggestions for additional work, the short time frame and aggressive schedule for the SIP call limits the ability of interested parties and the public to undertake additional modeling.

AMP-Ohio recognizes that addressing ozone transport requires careful balancing of competing interests, and we think that EPA should move ahead carefully and

thoughtfully in a manner that addresses all of these legal requirements and is supported by the science. In that way EPA and the public can be assured that the solution is appropriate and adequately addresses the problem.

Thank you.

MR. WILSON: Thank you.

Mr. Craig.

MR. CRAIG: Good afternoon. My name is Bruce Craig. I'm with the Natural Gas Supply Association. I'm the director of utility regulation and environmental affairs. The Natural Gas Supply Association represents integrated and independent companies that produce and market natural gas in the United States.

We appreciate this opportunity to address the agency, making brief comments regarding the proposed NOx SIP call. In addition, NGSA will be filing detailed comments in the docket.

To preface my remarks, I'd like to begin with a concept, that to reduce emissions from the power generation sector, EPA as an agency should focus its efforts on regulating the emissions from the production of electricity, not on micromanaging plant operations, fuel choices, or technology choices in which it is currently involved.

In this proposal, however, EPA has laid the

foundation for this to be realized. The NGSA believes that this foundation can and should be built upon.

The Natural Gas Supply Association and its members support the structure and intent of the proposal to significantly reduce emissions from the power generating sector for the purpose of reducing regional transport. For the agency's consideration, the NGSA highlights some important modifications to the proposal in order to facilitate a more viable and responsive emissions control program for the future of the electricity generation industry.

The members of the NGSA support the fuel neutral approach to setting NOx emission limits for electricity generation facilities. By setting these fuel neutral standards, EPA will eliminate a significant regulatory barrier to generating power with cleaner technologies.

Furthermore, the agency is correctly reducing its involvement in the fuel and technology choices made by generators in the electricity marketplace. A percentage reduction, as some have suggested, would continue the explicit subsidy of high emission generators.

NGSA considers the percentage reduction proposals ill-advised, particularly in light of the inter-regional wholesale power transfers that take place today and the

emergence of a competitive generation industry with access to and impact on significantly large regions. The agency has recognized this fact in its rulemaking and has correctly chosen to allocate the utility budget responsibility to the states on a fuel neutral basis. We strongly support the agency's decision to do so.

Natural Gas Supply Association believes that the agency could improve this approach further. We urge the EPA to seriously consider modifying its approach to adopt an output-based policy, pounds per megawatt hours, for controlling these emissions from electricity generators.

This change in policy would, for the first time, directly link what we need from generating plants, electricity, to what we want less of, which is pollution.

The direct linkage will provide clear market signals and directionally correct incentives for efficiencies that will evolve with the changes in the generation industry, and not lag behind, as is the case today.

Furthermore, the output-based standards create an important interface between energy trading and emissions responsibilities under a common currency, megawatt hour.

Other important benefits would be realized as well. The output-based approach should simplify the

administration of the regulatory program. It will also increase the flexibility of plant operations by enabling generators to improve non-combustion segments of their plants to meet their emissions responsibilities.

The NGSA supports implementing the proposed NOx reductions from power generators through a cap and trade system as well. This will enable the states and the generating industry to meet their NOx reduction obligations at the lowest possible cost.

Consistent with our prior recommendations, the Natural Gas Supply Association urges EPA to allocate the currency for the emissions on an output-based and fuel neutral basis.

In the proposal the cap focuses on fossil generating plants only. The NGSA believes that this is a mistake, because it omits from consideration the value of all generating plants' NOx emissions or the lack thereof. To complete the linkage between electricity and emissions, all large generators should be included in the emissions cap and trade, including renewable, biomass, hydro, nuclear, and fossil generators. To do otherwise would continue the practice of penalizing emissions-free and low emission generators.

In addition, for the trading system to provide

environmental incentives within a diverse and competitive generation market, the emissions profile of electricity must be valued across the entire generation sector, not limited only to fossil fuel units.

Thank you very much.

MR. WILSON: Thank you.

A couple questions. Mr. Craig, on the inclusion of all the generators, not just fossil, how would you have that work? We would set a NOx level based on what we thought could be accomplished at fossil and then allocate it across all the generators such that nuclear would get a certain allocation of NOx emissions? I'm just trying to understand.

MR. CRAIG: It was my understanding that you had approached the original allocation budget based on air quality impacts.

MR. WILSON: Obviously the nuclear plant wouldn't have any NOx emissions.

MR. CRAIG: True.

MR. WILSON: How do they participate in the trading program?

MR. CRAIG: They would participate through receiving an allocation for producing emissions-free or NOx-free electricity.

MR. WILSON: But someone would have to take that from one of them. We either end up with more NOx emissions or we have to reduce the allocation to one of the fossil plants.

MR. CRAIG: It would affect the rate. There is a little bit of a disjoint between the calculus involved in a .15 and an output-based standard. That calculus needs to be made first based on the tonnage budget that you need to set.

MR. WILSON: But somehow you either lose NOx reductions or one of the other plants gets less allocation than they otherwise would have.

MR. CRAIG: Yes. As you can appreciate, the portfolio of generating assets in most of the companies that own nuclear include all other generating sources. It does attribute a value for emissions-free and lower emitting generators as part of the program.

MR. WILSON: Mr. Straus, on the small business issues, maybe you can help us. As you pointed out in your testimony, we didn't include the smaller generators in calculating the budgets that we would assign to states and therefore that we were assuming that states wouldn't be regulating small businesses. On the other hand, you suggest we can't keep them from doing it. How do we work our way through that kind of problem? It's hard for us to analyze

something other than what we used as our own basis for coming up with these emission reductions.

MR. STRAUS: I think what we would like to see is a stronger message to the states to keep their hands off the people that you did not include in your budgets. Obviously if a state were to require equivalent emissions from a 15 or an 18 megawatt unit as part of its plan, EPA would be in a position to reject it, as I understand, but that would be pretty Draconian. Why not tell the states up front that they should either eliminate or seriously limit the impact on the very, very small units and avoid that problem. We don't want to have to fight that battle in Ohio as well as in Washington.

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

We have four remaining witnesses. We will do them in two groups of two. The first one is Mr. Tom Madsen and Ms. Mamatha Gowda.

MR. MADSEN: Thank you very much. I'm Tom Madsen. I'm speaking today on behalf of Illinois Power Company, a public utility with 550,000 electric customers serving central and southern Illinois. We have approximately 4,000 megawatts of coal-fired steam generating plants which would be affected by this proposed rulemaking.

I would like to offer comment in three different areas.

First, what we believe to be inadequacies of the notice of the proposed rulemaking.

Second, inconsistencies with the recommendations of the Ozone Transport Assessment Group.

Third, our support for the testimony of the Alliance for Constructive Air Policy (ACAP).

First, in regard to the inadequacies of the notice of the proposed rulemaking. For the purposes of this rulemaking EPA has chosen not to model each state separately. Until EPA performs a prerequisite state-by-state analysis and a finding of significance, Illinois Power feels that these analyses are incomplete and the basis for this proposed rulemaking would be inadequate.

Even if EPA performed a state-by-state analysis based on the supporting date in the proposed rule, the results would be suspect due to some inaccuracies in EPA's data and assumptions. One of those assumptions concerns the ability to retrofit over 1,000 units with drastic NOx controls in approximately three years.

Besides needing to design, procure and retrofit the control equipment, boiler operators are going to need to coordinate these extensive unit outages without compromising

their entire electric supply systems. This is several times more aggressive than the retrofits that were needed on phase II acid rain boilers, which involved 300 units over an approximately 5-year period of time.

IP would recommend that EPA address this reality of their proposed rules and the ability or the inability of the sources to comply prior to the promulgation.

In regard to inconsistencies with OTAG recommendations, OTAG did not recommend a uniform 22-state NOx cap based on .15 pounds per million Btu. OTAG's basic recommendation for utility sources was between Clean Air Act control levels and the less stringent of 85 percent, or .15 pounds per million Btu.

Even then OTAG recommended a 12-month subregional study to determine appropriate levels for each subregion. EPA did not allow for the recommended subregional study period. EPA did not customize the NOx reduction strategies based on air quality and control effectiveness. Instead, we have a single control level across the region.

It appears that this rate-based cap can translate to over 90 percent NOx reductions for some units, and this is greater than any reduction strategy recommended by OTAG.

Finally, our endorsement of ACAP. Illinois Power is a member of and supports the testimony of the Alliance

for Constructive Air Policy. The ACAP strategy provides significant and timely NOx reductions. The ACAP strategy will allow the atmospheric modelers the time that they need to identify if and where more reductions may be needed and whether those reductions should come from VOC or NOx sources, from ground level or elevated sources, from urban or rural sources, as well as from which states. Again, that's very consistent with OTAG.

The ACAP strategy would also allow more time to retrofit the units affected by the initial guarantee, and if needed, still provide time to install additional controls consistent with the attainment timeliness for serious and severe nonattainment areas.

The ACAP strategy is one that IP hopes is endorsed by the states and would be recognized by EPA as a reasonable, cost-effective way to address the remaining ozone nonattainment problems in our country.

Thank you very much for the chance to present this statement to you today. We intend to file additional written comments prior to your March 9th deadline.

MR. WILSON: Thank you.

Ms. Gowda.

MS. GOWDA: Good afternoon. My name is Mamatha Gowda. I'm with Sierra Club's environmental quality

program. I appreciate the opportunity to comment on the ozone transport SIP call. On behalf of the half a million members of Sierra Club, we urge the Environmental Protection Agency to strengthen its October 1997 proposal to reduce smog-causing pollution in 22 states east of the Mississippi River, including the northeastern states.

While we believe the EPA proposal is a step in the right direction, we urge EPA to tighten the smog emission limits to require 50 to 70 percent reductions from today's levels and to require full implementation by the year 2003.

Scientific studies confirm a direct relationship between declines in air quality and increases in health problems, especially among the young and the elderly.

In a 1996 13-city study conducted by the American Lung Association and the Harvard School of Public Health, ground-level ozone was linked with approximately 10,000 to 15,000 hospital admissions for respiratory conditions in 13 U.S. cities during the 1994 and 1995 high ozone season. The respiratory conditions analyzed included asthma, pneumonia, influenza, bronchitis, and chronic obstructive pulmonary disease.

In addition, between 30,000 and 50,000 emergency room visits during the same months were linked with high ozone levels.

Among the cities included in the 13-city study were a diverse range of geographic and demographic areas.

While the power sector is the largest industrial source of smog-creating chemicals, cleaning up emissions from power plants is one of the most cost-effective strategies to reduce smog pollution. Of the approximately 1,000 power plants operating today, 500 were built before modern pollution protections went into effect.

Older power plants do have to meet some pollution controls. In many cases the law still allows older plants to emit pollutants at four to ten times the rate of new plants built today. Yet old plants continue to operate, creating pollution problems that stray far from their sources.

Using real world air quality measurements and meteorological measurements, the Northeast States for Coordinated Air Use Management (NESCAUM) issued a study last year assessing the magnitude and impact of pollution transport. The NESCAUM study concluded that long-range transport of ozone and its precursors from upwind states of the Midwest and Southeast contribute significantly to chronically high and unhealthy levels of ozone pollution throughout large areas of the Northeast.

EPA's proposed rule would require 22 states east

of the Mississippi River to reduce nitrogen oxide by up to 70 percent from projected 2007 levels. While the proposed rule is a long awaited first step in the effort to clean up smog emissions east of the Mississippi River, NOx reductions should be based on today's power plant operation levels and not those projected a decade from now.

Midwestern and southern states are large contributors as well as victims of their own smog pollution. The midwestern and southern states have much to do when it comes to cleaning up smog, but they also have much to gain in terms of public health benefits for their own citizens.

Equally, the northeastern states must do more to improve regional air quality. While we generally support the proposed smog rule, we call on EPA to enhance public protection for our families, for our future by reducing smog emissions by 50 to 70 percent from today's levels, including a firm and unbreakable emissions cap on smog emissions, fully implementing the smog rule by 2003, and including stronger incentives for energy efficiency and renewable energy in the effort to reduce smog emissions.

Thank you.

MR. WILSON: Thank you very much.

Mr. Madsen, a question I had of some others. If you could submit some information for the record. You were

supporting the 2-stage concept, and if you could analyze how the first stage level would compare to the tighter NOx requirements for your company, it would be helpful to us.

MR. MADSEN: I will be happy to do that, sir.

MR. WILSON: Thank you both very much for coming.

The last two witnesses are Mr. Jason Grumet and Commissioner Lewis Shaw.

MR. GRUMET: I want to thank you for the opportunity to be here today. NESCAUM represents the eight Northeast state air pollution control programs, and it is on their behalf today that I come to share our emphatic support for the section 110 proposal under consideration today.

In short, at long last this proposal finally recognizes the true physical reality of ozone formation; it provides equity among different regions of the country in terms of air pollution control responsibilities; and equally important, it provides the flexibility that states have always desired in trying to design control strategies most appropriate for ourselves.

I'd say next to the NAAQS this is probably one of the most important regulatory actions the agency has undertaken, certainly in the last decade, in our opinion. While I don't want to diminish its importance, due to the length of the day and I'm sure yesterday, I think I'm going

to focus just on two points. One is the basis for action and the second point is the appropriateness and necessity of a utility cap based on the uniform application of a .15 pound per million Btu standard.

First, I'll tell you what I'm not going to talk about. I'm not going to talk about how technologically feasible these standards are.

I'm not going to go into any detail on the study that we are soon to complete, which we will submit to you, which suggests, to us at least, that in fact a .10 standard is equally achievable and attainable in the time frames under consideration.

I'm not going to share our analysis that suggests that the costs that EPA has projected are somewhat overstated, particularly when we look at the likelihood of a trading program.

I'm not going to focus on the importance of the agency moving forward with other measures such as the AIM rule, National Low Emission Vehicle program, and heavy duty engine control strategies. I guess we would also like to stress as an aside the urgency of actions to ensure that those heavy duty engines achieve their in-use emissions over their full useful lives.

What I do want to talk about is the basic engine

driving this action, and that is EPA's recognition that ozone is a regional problem that requires regional solutions. Of course I haven't been able to hear much testimony yesterday or today, but I have already heard calls for more study, the suggestion that we don't know enough, we really should take some more time. From the perspective of the Northeast states, in the face of what we know, we think that would be patently irresponsible public policy.

I'd like to give a quick review.

The regional nature of the ozone problem was understood shortly after the adoption of the 1970 Clean Air Act. A 1973 study conducted in New York State concluded that "local photochemical generation of ozone is not the dominant mechanism for ozone production."

A 1976 conference jointly hosted by EPA and the OECD concluded that "elevated oxidant ozone concentrations can originate upwind from as far away as 1,000 kilometers" and that regional "multistate control programs are needed rather than state-by-state efforts."

By the 1980s, it's fair to say that transport and regional problems was almost common knowledge. The Office of Technology Assessment in 1984 reported to Congress that until recently air pollution was considered a local problem; now it is known that winds can carry air pollutants hundreds

of miles from their points of origin.

We are all familiar with the NAS study which concluded that there are persistent blankets of ozone smog covering thousands of kilometers of the eastern U.S.

I mention this only to point out that OTAG collected, reviewed and augmented this data to a tremendous degree. But it led to a really unmistakable conclusion, that while local control measures continue to be necessary, they are not going to be enough.

The fact that it's impossible to hold an area responsible for pollution it doesn't create has, of course, led EPA to try to do some things, like Rhode Island's 1982 attainment but for transport policy, the overwhelming transport policy, changes to modeling design days, to alleviate the unfair burden of sanctioning a state for activities beyond its control.

While the Northeast states appreciate EPA's acknowledgment of transport to alleviate unnecessary downwind burdens, we appreciate much more the actions of the agency to actually control those upwind emissions, because while we can alleviate the political burdens from transport through regulatory efforts, we can't, unfortunately, reduce the public health burdens unless we reduce the pollution.

To that end, we see this measure as a fundamental

shift in our regulatory paradigm that has been long coming, and we support it.

With regard to the specifics of the uniform application of standards, I know we have heard a lot of desire for additional modeling, suggestions that every ozone molecule is not created equal. While that may be true, our analysis suggests that the .15 standard is very cost-effective throughout all 22 states. While the benefits may be somewhat greater in Ohio than in Alabama, nevertheless, when you compare it to the other control strategies available to us, we think it's cost-effective across the board.

For that and many other reasons, we support this action.

MR. WILSON: Thank you.

Commissioner Shaw.

MR. SHAW: Good afternoon. I'm Lewis Shaw, deputy commissioner with the South Carolina Department of Health and Environmental Control. I'm proud to say that South Carolina is an attainment state once again. However, we are opposed to this proposed rule for a number of important reasons, both technical and legal.

South Carolina, like other states, has said from the beginning that sound science fairly applied must be the

basis for developing solutions to the ozone nonattainment problems of Atlanta, the Lake Michigan area, and the Northeast corridor.

I am here today because EPA has incorrectly targeted South Carolina as contributing to the failure of these areas to attain the 1-hour standard. South Carolina concurs there is a problem; it does exist; but South Carolina does not contribute to this problem.

EPA's proposed rule and title -- and I would like to emphasize the title -- "Finding of Significant Contributions" fails to utilize sound science.

In addition, EPA has failed to fairly apply the proposed rule. The rule effectively ignores Congress and the Clean Air Act by attempting to accomplish through regulation what Congress has deliberately chosen not to do through legislation.

The rule plays fast and loose with the very important term "significant contribution," and it uses it in such a way as to deprive it of any meaning. Using the rule's logic, any contribution whatsoever within an arbitrarily drawn modeling grid line is now significant. This clearly is not the legal or common sense use of the word.

Section 110 of the Clean Air Act requires a

state-by-state demonstration of significance, and not a composite or an aggregate showing. Again, EPA is ignoring the clear meaning of the law.

It is completely inappropriate, both legally and technically, for EPA to address the new 8-hour standards in this proposed rule. The Clean Air Act lays out a deliberative process for states to address nonattainment issues created by a new or revised standard. EPA should not require states to take potentially punitive or misdirected measures prior to being designated nonattainment.

But for the sake of today's argument, let's pretend the proposed rule has a solid legal basis. Forget the congressional intent, the Clean Air Act, the Federal Administrative Procedures Act, and legal precedent. There is absolutely no technical basis for a conclusion that South Carolina contributes significantly or otherwise to those nonattainment areas of Atlanta, Lake Michigan area, or the Northeast corridor.

The proposed rule also fails to provide the needed technical demonstrations. It does not define significant contribution; it does not provide support for its findings of significant contribution; it does not demonstrate on a state-by-state basis transport, if there is any, or the degree of transport; it does not demonstrate that Draconian

across-the-board reductions will assure attainment of the 1-hour standard; it definitely does not demonstrate how contributions, if any, from South Carolina preclude those specific areas from demonstrating attainment with the 1-hour standard.

Throughout the proposed rule, EPA presents its actions as being based on OTAG recommendations. EPA's improper interpretation of the OTAG recommendations has infuriated states and other stakeholders. I believe the OTAG was successful. It developed recommendations, it enhanced communications, and it fostered partnerships. Unfortunately, this proposed rule's twisted use of the OTAG findings will inhibit active and constructive participation in future similar efforts.

I respectfully request that EPA reconsider the proposed rule and its effects on South Carolina and other states. Proceeding along this dangerous and precedent-setting course will result in expensive and protracted litigation. Instead of forcing states, EPA and other stakeholders to commit resources to legal challenge, EPA has the opportunity to allow states the flexibility to commit those resources to fulfill the original OTAG recommendation of more detailed subregional modeling necessary to answer all of the questions the proposed rule

has failed to address.

Thank you for the opportunity to provide my preliminary comments today. More detailed written comments will be submitted prior to the closing of the record.

Recognizing the complexity of these issues and their far-reaching impacts to citizens and the business sector unable to be present, we request that EPA extend the comment period an additional 120 days and conduct public hearings in all affected states. Anticipating that public comments received will result in significant changes to the proposed rule, we request that EPA republish a proposed rule that accurately addresses all concerns.

I sincerely hope that at the end of this process sound science will prevail.

Thank you.

MR. WILSON: Thank you.

Mr. Grumet, earlier in the hearing others have raised the concern that the SIP call would impose a burden on attainment areas in upwind states for problems where the nonattainment states aren't doing all that they could be doing to meet the standards. You don't need to comment on that now. I think many of the examples came from states that were members of your group, and you may want to react to some of those comments.

MR. GRUMET: I'll certainly reflect that. The one thing I would say is that a rising tide will lift all boats. I think it's been kind of a nihilistic sense that it just wouldn't matter that has undermined some efforts in some Northeast states to do things affecting the general public. I&M and regional controls are certainly going to help.

MR. HOFFMAN: Would South Carolina be able to develop, adopt and submit a SIP revision within the 12-month period that the rule is envisioning?

MR. SHAW: Given the controversial nature of this action, I think it would be very unlikely we would be able to get that done in a 12-month period.

MR. HOFFMAN: Is that because of the controversy of it, or is that because of the state administrative or legislative timetables?

MR. SHAW: The legislative timetable. We have to have any proposed rules or regulations approved by our general assembly. This would be a controversial issue for us.

MR. WILSON: Thank you both very much for traveling to be here today.

That concludes the list of witnesses we had. Thanks to everybody who prepared testimony. We appreciate it.

We will have a copy of the transcript within 30 days in the docket and available for others.

The comment period is open until March 9th. We intend to have a supplemental proposal out covering a number of areas, most particularly a proposed model trading program that will have its own comment period.

Again, this comment period is scheduled to close on March 9th.

That concludes this hearing. Thanks again for everybody who came.

[Whereupon, at 1:50 p.m., the hearing was concluded.]