

P R O C E E D I N G S

(9:10 a.m.)

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2
3 MR. WILSON: Good morning, and thanks to all of you for
4 coming to this public hearing on the supplemental notice for the
5 proposed ozone transport rule, and modeling issues associated with the
6 November ozone transport reduction proposal.

7 My name is Dick Wilson, I'm the acting Assistant
8 Administrator for Air and Radiation. The supplement notice we're
9 discussing today augments our November 7, 1997 proposal to reduce ozone
10 pollution across the eastern United States.

11 In that proposal we articulated our plan to reduce the
12 transport of ground-level ozone pollution by establishing state-wide
13 budgets for nitrogen oxides that would reduce nitrogen oxide, also known
14 as NOx, emissions across the eastern United States by an average of 35
15 percent in the year 2007.

16 At the time the original notice was proposed in November, we
17 announced that a supplement would be published a few months later. As
18 most of you know, this supplemental notice that we're discussing today
19 contains information about the agency's proposed model cap-and-trade
20 program, revised statewide NOx emission budgets and cost analysis, and
21 air quality analyses of the proposed statewide emission budgets. It
22 also discusses proposed state reporting requirements, revisions to the
acid rain NOx program, and state implementation plan approvability
criteria.

Another important element of our hearing today in the
rulemaking process is that EPA, in response to public comments, reopen

1 the public comment period for two significant issues raised in the
2 November proposal, first, additional air quality modeling runs, and
3 second, the implications that any such additional runs may have for the
4 state NOx budgets under consideration.

5 We're especially interested in the new relevant modeling
6 information that the states and the public can share with us, the public
7 comment period for these two topics, and the entire supplemental
8 proposal will end on June 25, 1998.

9 This supplemental proposal was signed on April 28, 1998, and
10 published in the Federal Register on May 11, 1998. The notice of
11 proposed rulemaking was signed on October 10, 1997, and published in the
12 Federal Register on November 7, 1997.

13 We're here today because we are concerned about the health
14 risk associated with ground-level ozone, which is the primary
15 constituent of smog. Smog causes hundreds of thousands of cases of
16 respiratory illness, impaired lung function, and exacerbated incidents
17 of asthma in the U.S. every year. Ground-level ozone can also reduce
18 agricultural yields for many important crops, such as soybeans, wheat,
19 and cotton.

20 Nitrogen oxides, the pollutant targeted by this proposal,
21 also contribute to acid rain and particulate matter problems, and NOx
22 harms sensitive waterways and estuaries, causing fish kills.

For many years, scientists, meteorologists, and air quality
managers have recognized that air pollution is carried by the wind
easily across state borders. We know that emissions from upwind sources
can adversely affect the air quality in downwind communities. In the

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

5 As a result, in 1995, the Environmental Council of States,
6 known as ECOS, recommended the formation of the Ozone Transport
7 Assessment Group, called OTAG. The ECOS sought the formation of the
8 national work group to allow for a thoughtful assessment and development
9 of consensus solutions to the problem of ozone transport.

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

15 The latest EPA OTAG modeling and analysis indicate that a
16 strategy targeting NOx would substantially reduce ozone problems in the
17 eastern U.S. After two years of extensive modeling, as well as a weight
18 of evidence analysis, EPA identified 22 eastern states as significantly
19 contributing to ozone non-attainment problems in other downwind states.

20 Last July, in recognition of new scientific evidence, the
21 EPA revised the national standard for ground-level ozone. At the time
22 the ozone standard was revised, we announced an implementation strategy
for that new standard that would take advantage of ongoing initiatives
to ensure that states could meet the new standard cost-effectively.

The proposed NOx SIP Call and its supplement make up the
centerpiece of that strategy. If put into effect, this plan would

1 enable the vast majority of cities to meet both the current and new
2 updated ozone standards without imposing additional new local pollution
3 controls or measures.

4 In this action, the EPA is proposing to require that states
5 revise their air quality strategies to meet specific budgets for
6 nitrogen oxides. However, the proposal does not mandate which sources
7 must reduce pollution to meet the budget. States will have the
8 flexibility to meet the pollution reduction targets by reducing
9 emissions from the sources they choose.

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

15 To ensure that NOx reductions are as cost-effective as
16 possible, we are also proposing a market-based trading system for use by
17 the states. A market-based program would allow utilities that do not
18 meet the reductions to buy and trade credits from utilities that exceed
19 the reduction limit. This type of system already has been used to
20 successfully reduce sulphur dioxide through the acid rain program.

21 The matter of interstate transport, as I mentioned earlier,
22 has been taken seriously by a number of states. In August, 1997,
Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode
Island, Pennsylvania, and Vermont all submitted petitions to EPA, citing
Section 126 of the Clean Air Act related to interstate pollution
abatement.

1 The petitioners have asked EPA to make a finding that
2 utilities and other sources of NOx exacerbate ozone problems in the
3 Northeastern states. All the petitions target sources in the Midwest,
4 some of the petitions target additional sources in the South, Southeast,
5 and Northeast. We've agreed with the petitioners to a schedule that
6 addresses their concerns and parallels the schedule for this rulemaking.

7 I want to stress that EPA has not made any final decisions
8 regarding the ozone transport proposal. We're interested in hearing
9 your comments. The public comment period on this supplemental proposal
10 closes June 25, 1998. A transcript of this hearing will be prepared.
11 It will be available for inspection and copying at EPA's Air and
12 Radiation docket office, and on the Internet in approximately 30 days.

13 Now, I'd like to go over the ground rules for the hearing.
14 I'm going to call scheduled speakers to the witness table up front here
15 in groups of three. Speakers are asked to limit testimony to five
16 minutes each, and remain at the witness table until all three speakers
17 have finished. We would be happy to take your full written statement
18 today, if you've brought one, and will review it. Please leave five
19 copies of your statement at the registration table, if you haven't
20 already done so.

21 We welcome all comments, and if there is anyone in the
22 audience who would like to testify, but has yet to register to do so,
please sign up at the registration table.

 For those who have already registered to speak, we've tried
to accommodate your requests for specific time slots. We ask for your
patience as we proceed through the list. Some minor adjustments may

1 need to be made as the day progresses.

2 We have a timekeeping system, which consists of green,
3 yellow, and red lights. You may begin speaking at the green light, when
4 the yellow light appears you have about a minute left. We have overhead
5 and slide projectors, if you need them.

6 The schedule is a little loose this morning. We are
7 scheduled to have a lunch break about 11:30 and come back at 12:30 for
8 about an hour more. I'm going to assume that it's in everybody's
9 interest, if people are here in time, that we'll just work through, and
10 be finished at 12:30 or 1:00, and then break at that point, but we need
11 to see if people who maybe were planning this afternoon arrive in time.

12 If they don't, then we'll follow the sort of printed
13 schedule, and take a lunch break and come back, so we'll see how that
14 kind of works as the day progresses, but given that it's a Friday
15 afternoon, I suspect everybody would be interested in getting out as
16 soon as we can, so we'll just see how that works, but we do want to make
17 sure we have time to hear everybody who is scheduled, or anybody else
18 who is coming and wants to testify. So we'll see how that works as we
19 go on.

20 With me today here at the table are John Seitz, Director of
21 our Office of Air Quality Planning and Standards, and Paul Stolpman,
22 Director of the Atmospheric Programs Office. We also have Amey
Marrella, from our Office of General Counsel, and Peter Lidiak, of the
Office of Mobile Sources, sitting in the front, to help with any
questions, and some other EPA staff will be coming later.

With that, we'll get started. The first two witnesses are

1 Bruce Carhart and Sue Gander.

2 MR. CARHART: Good morning. My name is Bruce Carhart, and I
3 am the Executive Director of the Ozone Transport Commission. The Ozone
4 Transport Commission, or OTC, was created by Congress in the Clean Air
5 Act amendments of 1990. Twelve Northeast states and Mid-Atlantic
6 states, and the District of Columbia, are represented on the OTC.

7 The OTC was charged to assess the nature and magnitude of
8 the ozone problem, evaluate control approaches, and recommend control
9 strategies to address the ozone problem in our region.

10 At your February, 1998, public hearing, the OTC expressed
11 its general support for EPA's proposed call for revisions of State
12 Implementation Plans, or SIPs, in the Eastern United States. The states
13 of the OTC themselves have gone to great lengths to reduce emissions
14 within the OTC's region. A list of control measures were submitted as a
15 part of OTC's comments on EPA's original proposal, and is attached to
16 the written statement I am submitting today.

17 However, our modeling and air quality analysis, as well as
18 work done by EPA, show that we cannot attain the health-based air
19 quality standards without reductions in ozone and ozone precursors
20 coming into the OTC's region. The old measurements have shown that
21 levels of ozone are frequently close to or above the level of the
22 national ambient air quality standards.

The work of the Ozone Transport Assessment Group, or OTAG,
as well as EPA's proposed SIP Call, underscores the regional nature of
the ozone problem across the Eastern United States.

Though we expressed our support in principle for the

1 original proposal, we also indicated in February our desire that EPA
2 maintain two major principles, that EPA finish its rulemaking by its
3 target deadline of September, 1998, and that the stringency of the final
4 SIP Call outside the OTC's region be at least as stringent as the
5 proposal EPA made in November.

6 We also specifically expressed our position that any
7 technical corrections should not inflate emission's budgets.

8 We continue to express that the proposal will be finished
9 this coming September; however, EPA's technical corrections may have, in
10 fact, needlessly increased the emissions that will be allowed in 2003.

11 We are especially concerned about the increases associated
12 with assumed growth rates. We do not want EPA to start on a slippery
13 slope, where the SIP Call starts getting weaker.

14 I'd like to give you a few specifics. We recognize that the
15 original budget that was released with the November proposal had a
16 number of errors in it, and it was proper to correct those errors.
17 There are, for example, some additional emission reductions associated
18 with industrial boilers, but these only reflect what the text of the
19 original proposal intended.

20 The growth changes in the utility budget, though, are more
21 problematic. In our comments submitted on March 9th, we stressed that
22 any new growth should be well under 0.15 pounds per million BTU.
Combined cycle units in the OTC's region have been permitted at much
lower than this level.

EPA's recent proposal failed to reflect this comment.
Allocating emissions for plants that don't need such an increment makes

1 emission budgets larger than they should be.

2 Since there is a high degree of uncertainty associated with
3 any growth rates, EPA should justify any growth rates used in
4 calculating emission budgets. We would prefer EPA not to use growth
5 rates at all. We also believe that all states that contribute to
6 non-attainment have a responsibility for managing the growth of new
7 emissions. A firm budget can provide such a mechanism in lieu of
8 offsets.

9 Historically, the OTC states have controlled the growth of
10 new emissions by requiring lowest achievable emission rate, or layer
11 technology, when permitting new sources. The OTC believes that EPA
12 should use a similar approach when calculating the new source portion of
13 state budgets in the SIP Call, if EPA decides to use growth rates in
14 those calculations.

15 Simply using .15 pounds per million BTU for new sources is
16 not appropriate in any area which is contributing to exceedances of an
17 ambient standard. We, therefore, reiterate our comment that any budget
18 that explicitly reflects new sources should also reflect potential
19 technological capabilities.

20 We also want to stress our support for encouraging
21 market-based incentive programs as a part of EPA's overall
22 implementation of the SIP Call, and the NOx emissions trading program,
in particular. Prior to approval of the OTC NOx memorandum of
understanding, or MOU, in 1994, we anticipated a 30 percent reduction in
compliance costs as a result of an emissions trading program. Recent
projections by EPA are similar.

1 We are aware that EPA is investigating issues regarding how
2 the OTC trading program and the trading program outside the OTC's region
3 can operate together. We intend to respond to those issues as a part of
4 our comments on the supplemental proposal in late June. A number of
5 these issues probably cannot be fully resolved until after EPA finalizes
6 its SIP Call and trading program.

7 Nonetheless, the OTC wants to express its willingness to
8 work with EPA to determine how the OTC program, including all
9 signatories of the OTC NOx MOU, and the larger EPA program can work
10 together over the long term.

11 Thank you.

12 MR. WILSON: Perfect. Bruce had it perfectly timed there.

13 MS. GANDER: I'm Sue Gander. I'm a Senior Policy Analyst
14 with the Center for Clean Air Policy, and I want to thank you for the
15 opportunity to be here today to express our support for the major
16 reductions in NOx emissions that are contained in the proposed rule.

17 We have been working to address the ozone issue since the
18 early 1980s, and we're a strong advocate for the creation of the ozone
19 transport assessment group, and we actively participated in that
20 process.

21 A number of things are contained in my comments, I'm going
22 to just try to touch on some of the highlights to meet the five-minute
time period.

 MR. WILSON: Okay.

 MS. GANDER: First, on cost-effectiveness of the utility
controls, I just want to emphasize that under the revised supplemental

1 rulemaking, utility sector controls remain one of the most
2 cost-effective sources of reductions, and the utility NOx controls at
3 the .15 pound per million BTU level represent the next block of
4 cost-effective reductions available to states. I just want to point out
5 a few comparisons to put that in context.

6 Not only are the utility controls cost-effective, but they
7 also should have minimal impact on the electricity rates. The annual
8 cost of the SIP Call, according to EPA estimates, is about \$1.3 billion
9 in 2005, which amounts to just one percent of the electricity revenues
10 for the affected states.

11 This is equivalent to about an increase of perhaps 65
12 percent per month, based on a typical household bill for electricity of
13 \$60 per month. While some companies might face higher individual costs,
14 I think this overall cost comparison shows the basic relatively low
15 impact of additional utility controls on consumers.

16 Another point of comparison is with the estimate that one of
17 the largest utilities affected by this proposed rule has given. The
18 American Electric Power Company has estimated that the cost of their
19 system will be on the order of 2.9 mills per kilowatt hour.

20 Again, even under this assumption, which is slightly higher,
21 the cost will be equivalent to about four percent of the national
22 average revenue per kilowatt hour, which is about 69.1 mills per
kilowatt hour in 1994.

Once more, the ongoing restructuring of the electricity
industry has been estimated to account for savings of up to \$40 billion
per year nationwide, and only a quarter of these savings were

1 concentrated in the states affected by the SIP Call. Those savings
2 would be enough to completely offset the impact of additional utility
3 NOx controls.

4 A comment on some of the modeling that EPA did with this
5 revised rule. In earlier comments, the Center raised the concern that
6 the modeling did not fully incorporate the most recent estimates of
7 future nuclear generation under the restructured power industry.
8 Specifically, there are two dozen nuclear units that are generally
9 considered to be at risk of closing early under a more competitive
10 electricity market, and there is a concern there with impacts on
11 emissions and related compliance costs.

12 Under the revised rule, EPA has made two important updates
13 of their modeling assumptions that we think appropriately affect a
14 likely future scenario for power generation sector, and I just want to
15 point these out.

16 First, EPA increased the amount of nuclear generation
17 expected to retire early, such that it's pretty much in line with the
18 most recent estimates conducted by the Energy Information
19 Administration, and secondly, EPA also increased the average capacity
20 factors for these nuclear plants, so they're much more in line with what
21 we're seeing with recent trends over the past few years that have
22 indicated substantial improvements and performance over the life of the
plants.

The point here is that EPA already factors in the impacts of
a substantial number of early nuclear plant retirements, and moreover,
under the new emissions budgets contained in the rule, the costs of

1 utility controls are down to levels that do not seem to be close to the
2 knee in the cost curve, the point at which the marginal costs of
3 reductions increases sharply.

4 As such, a significant number of additional nuclear units,
5 in addition to those already incorporated in the modeling, would have to
6 be retired early.

7 Two final points. One is on the timing of the proposed
8 rule. We'd like to urge EPA to consider strongly what types of
9 reliability implications a rule might have, particularly in the light of
10 the level technology additions that need to be made, and the likelihood
11 of early nuclear retirements, and look at this carefully on a
12 region-by-region basis, and take that into account.

13 Then finally, I'd like to urge the development of an early
14 reduction credit program for CO2 emissions. There are many different
15 ways to address this rule through technology changes, or through
16 switches to other fuels, such as gas, and depending upon what approach
17 you take, you can capture multiple benefits, and I'd like to encourage
18 EPA to try to incentivize a switch that would encourage the optimization
19 of these types of technology controls.

20 I want to thank you for this opportunity, and look forward
21 to working with you and other stakeholders. Thank you.

22 MR. WILSON: Thank you. I just had one question for Mr.
Carhart. I guess I could use a little more sense on the growth issue,
since we're sort of picking up where the OTAG process left off, and that
whole process focused on 2007 emissions, including projections to their
-- are you suggesting we abandon all that work and do it without growth

1 projections, or what do you suggest?

2 MR. CARHART: Our primary concern is for the stringency of
3 the overall approach, so there are many different ways that you can
4 calculate budgets. It's possible to include growth in such a way to
5 make sure that the stringency of the overall program is maintained;
6 however, we don't think that growth should be put in where it
7 essentially provides for an increment of emissions that isn't really
8 needed, given potential technology for those new sources.

9 In that case, we think that the stringency of the program is
10 better preserved by, again, reflecting -- if you do choose to use growth
11 rates in your calculations, technology associated with -- as I
12 mentioned, the potential technology that would be used on those sources.

13 So it's possible to use growth rates and maintain the
14 stringency, but you just have to do it carefully.

15 MR. SEITZ: Let me follow on that. I think in your
16 testimony you said -- I understand that if we use it, you said that
17 you'd prefer we didn't. How would you do it if we didn't?

18 MR. CARHART: Well, there are a number of alternatives. In
19 the case of the OTC, when we developed our NOx MOU, we utilized the 1990
20 baseline, and then calculated our 1999 budgets and 2003 budgets, based
21 on emission limitations off of that 1990 baseline. In that way, any
22 growth would be subsumed as a part of the cap that was established
through that calculation.

MR. SEITZ: Of the 1990.

MR. CARHART: Of the 1990 baseline. That's correct.

MR. STOLPMAN: May I follow-up with a question? Sue, on the

1 timing issue, you didn't say directly, but it sounded like you're
2 concerned that the compliance date of 2002 might create reliability
3 problems, is that the point you're making?

4 MS. GANDER: Yes, that's part of the issue. It depends upon
5 how soon companies start their retrofitting process, and I guess the
6 concern we have is not with the stringency of the rule, but with the
7 time period that it may take to convert essentially over 90 percent of a
8 coal fire capacity to some kind of technology. I think there's a limit
9 on how much flexibility would be needed for that.

10 Probably the best example is the changeover that they did in
11 Germany, where from 1985 to 1990, they converted something like 30,000
12 -- well, 140 units to SCR, which is about half of what we would need to
13 do under this rule.

14 So it shows that it's possible to do this under a certain
15 time period, but we are just urging to really look carefully at this,
16 particularly in terms of what capacity is available for different
17 regions, and just take that into account.

18 MR. WILSON: Do you have an analysis that looks at that
19 issue?

20 MS. GANDER: Yes. And there are more comments in --

21 MR. WILSON: Okay. We'll read the whole --

22 MS. GANDER: There are more in the comments that I didn't
get into, but --

MR. STOLPMAN: But you attached the data for the experience
to your testimony.

MS. GANDER: Yes. I can get you the study that shows that,

1 too.

2 MR. STOLPMAN: Could you submit that for the record?

3 MS. GANDER: Sure.

4 MR. WILSON: Thank you very much for coming. The next three
5 witnesses are Paul Miller, Gerald Yamada, and Danny Herrin. Good
6 morning.

7 MR. MILLER: Good morning. My name is Paul Miller, with the
8 Northeast States for Coordinated Air Use Management, and I'm presenting
9 this brief testimony today on behalf of the Northeast states, the States
10 of New York, New Jersey, and the six New England states.

11 NESCAUM welcomes EPA's proposed regional NOx strategy under
12 Section 110. A regional approach to controlling smog is long overdue,
13 and needs to be in place by the 2003 ozone season. While NESCAUM has
14 been concerned with the interstate transport of air pollution for over
15 three decades, the transport of ozone and its precursors is not confined
16 with the NESCAUM states.

17 For example, within the Ohio Valley, there's a large and
18 persistent level of high ozone during the summer months relative to air
19 in other parts of the country. People living in large areas of Indiana,
20 Ohio, Kentucky, and West Virginia actually experience higher long-term
21 ozone levels than people living in the Chicago or Boston metropolitan
22 areas.

The regional smog problem, however, is not limited only to
these areas. The Northeast has its own well-documented problem.

A regional NOx control strategy will help the Northeast in
light of studies showing that ozone and its precursors are transported

1 out of the Ohio Valley and into the Northeast.

2 In the context of establishing state budgets, NESCAUM
3 supports EPA's use of uniform control assumptions when establishing NOx
4 budgets for the states determined to contribute significantly to
5 non-attainment endowment states.

6 We regard this approach as equitable, and believe that it
7 will put all sources on an equal footing, by requiring sources
8 throughout the region to implement available cost-effective controls.
9 We further believe that this approach will minimize administrative and
10 other difficulties in implementing control and trading programs.

11 The application of a single emission rate for utilities is
12 justified by several independent reasons: First, the technical
13 feasibility and extremely favorable cost-effectiveness of utility NOx
14 controls; second, the timing and availability of effective controls; and
15 third, the need for reducing the transport of ozone and its precursor,
16 so that many downwind states may make significant progress towards
17 attainment.

18 In the use of growth projections with the current inventory,
19 NESCAUM still questions the use of growth projections to determine the
20 size of the budgets. We believe that EPA should not apply growth to
21 current inventories prior to applying controls and establishing emission
22 budgets. This use of growth estimates introduces a necessary level of
uncertainty into the budget calculation process.

While the baseline emissions used in the budget calculation
can be verified, growth estimates are only predictive, and could
undermine the attention of this action.

1 If EPA decides that growth should be used in determining
2 budgets, the NESCAUM states believe that the growth rate should be
3 applied equally across the OTAG region. Growth should not be applied on
4 a state-specific basis, since doing so has the inappropriate effect of
5 providing some states with an economic advantage over other states with
6 lower projected growth.

7 EPA should not provide this economic advantage to some
8 states by assigning higher rates of growth. EPA should consider that a
9 robust trading program will accommodate growth in a fair and efficient
10 way, and EPA should avoid the inequality of applying different growth
11 rates across the region.

12 With regard to an output-based allocation, NESCAUM is
13 pleased to seek consideration of an output-based allocation methodology
14 in the supplemental notice. Northeast states for some time supported
15 the application of output standards, or allowance allocations to
16 emission sources such as fossil fuel utility boilers.

17 For example, support for the output-based approach was
18 included in several fundamental principles for utility restructuring and
19 transmitted to Deputy Secretary of Energy, Betsy Muller by eight
20 northeastern state environment commissioners on May 7, 1998.

21 In addition, a number of NESCAUM states have incorporated
22 the output-based approach in their restructuring initiatives and in
their proposed regulations to implement phase three of the OTC NOx MOU.
The rationale for this approach is compelling.

 An output-based approach that will allocate allowances to
electricity generators, based on their kilowatt hours output, is more

1 environmentally effective than an allocation based on heat input.

2 Unlike traditional allocation methodologies, based on
3 historic heat input, which were past inefficiencies and dirtier fuel
4 choices, the output-based approach rewards efficient generation and
5 cleaner fuels. It establishes a common competitive basis for old and
6 new sources, and provides a more equitable and rational basis for
7 regulation.

8 It is important to clarify, however, that while the NESCAUM
9 states strongly support the application of an output-based allocation
10 methodology to fossil fuel and electricity generators, they have not
11 evaluated the implications of extending this methodology to all
12 generators, including non-fossil, as suggested in the supplemental
13 notice.

14 Therefore, NESCAUM does not take a position on the inclusion
15 of non-fossil generators in the allocation of allowances under the
16 proposed Section 110 action at this time.

17 It must also be stressed that our support for the
18 application of an output-based allocation to fossil fuel generators is
19 predicated on the key assumption that this approach does not change the
20 total emissions budget being proposed for the region. Only the initial
21 allocations of the allowances under the cap would change.

22 This concludes NESCAUM's comments, and we will submit more
detailed written comments prior to the end of the comment period. Thank
you.

MR. WILSON: Thank you. Mr. Yamada.

MR. YAMADA: My name is Gerald Yamada, I am with the law

1 firm of Paul, Hastings, Chenofski and Walker. I'm here appearing on
2 behalf of Ohio Edison Company, Pennsylvania Power Company, Cleveland
3 Electric Illuminating Company, and Ohio Toledo Edison Company,
4 collectively known as the First Energy Companies.

5 I have submitted a written comment, and what I'd like to do
6 is just summarize a couple of the high points in it.

7 In a supplemental notice to the proposed SIP Call rule, EPA
8 has submitted -- there's comment on an output-based approach as an
9 alternative approach to calculating the component of the budget for
10 electric generation. First Energy supports an output-based approach
11 that is fuel neutral for allocating NOx allowances to the states as part
12 of the regional trading system.

13 First Energy submitted comments on the proposed SIP rule
14 that the output-based approach is cost-effective, technically feasible,
15 result in better air quality benefits, and can be administered
16 efficiently for all sources of generation.

17 In response to the questions that the EPA has raised in
18 supplemental about the output-based approach, First Energy will submit
19 detailed written comments to respond to those questions. In our
20 discussions with interested parties, we have found interest and support
21 in other utility companies, the renewable community, environmental
22 groups, and states.

I would like to highlight two points in my written
testimony. The two points relate to the air quality impacts from
output-based approach, and the second is that the allowances must be
uniform throughout the region.

1 As to the first, air quality impacts from output-based, we
2 feel that the air quality impacts will be better. EPA has solicited
3 comments as to whether air quality impacts of an output-based allocation
4 system may be different from the air quality impacts from the proposed
5 input-based approach. Because there will be a difference in state
6 budget allowances under an output-based approach, EPA asks whether some
7 states may not opt into the trading program.

8 EPA specifically indicated in its proposal that it would
9 utilize the most cost-effective control measures in determining the
10 proper emissions reductions for the region. The cap and trade programs
11 provide a cost-effective method of achieving compliance.

12 EPA estimates that an input-based trading system reduces
13 cost of compliance from the traditional command and control approach by
14 as much as 25 percent. We agree. Uniform output-based allocation, in
15 fact, reduces these costs even further, because over time there will be
16 an increase in non-emitting generation, which is substituted for the
17 generation most expensive to control, namely NO_x.

18 This results in making NO_x emissions, on average, cheaper to
19 eliminate than they might be in an input-based system. The shift to
20 non-emitting and lower emitting generation, which is encouraged by
21 output-based allocation, reduces the cost per ton for the latter, more
22 expensive, harder-to-eliminate NO_x emissions.

 It is, therefore, highly unlikely that any state would
choose more expensive command and control regulation over a less
expensive trading option, because it receives a smaller budget under the
output-based approach. In addition, as more low- and non-emitting

1 generation replaces more expensive generation, air quality impacts,
2 under an output-based approach, will be better.

3 Let me turn to the allowances. EPA solicited comments on
4 sub-regions. Because ozone transport is a regional problem requiring a
5 regional solution, the allowance must be uniform throughout the region.
6 In creating a voluntary cap and trade program, EPA should not create
7 artificial barriers to trading, such as geographical boundaries or
8 sub-regions. Such barrier would defeat the purpose to be served by a
9 trading program. This was recently recognized by the fourth circuit.

10 In reviewing an ownership claim to emission allowances under
11 Title IV, the court described the relationship of allowances to market
12 trading as follows.

13 MR. WILSON: If you could wrap up your comments.

14 MR. YAMADA: EPA is justified in output-based allocation,
15 because it promotes the general goal of cost-effective emission
16 reduction through trading, and encourages cost-efficient, low, and
17 non-emitting generation of electricity. It takes full advantage of
18 existing market forces, encouraging maximum fuel efficiency, and fossil
19 fuel. Thank you.

20 MR. WILSON: Thank you. Mr. Herrin.

21 MR. HERRIN: Good morning, my name is Danny Herrin, I'm
22 manager of Clean Air Compliance for Southern Company Services, in
Birmingham, Alabama, and I'm here representing the Southern Company with
these short comments.

These rules, as proposed, will have a significant impact on
over 25,000 megawatts of Southern Company generating capacity and

1 hundreds of industrial sources in Alabama and Georgia. These rules will
2 also economically impact all our customers, businesses, and citizens in
3 these states.

4 I'd like to summarize my written comments by addressing a
5 few questions. Are the emission inventories in NOx budgets accurate
6 enough for modeling decisions? Our opinion is they are not.

7 As proposed in the SNPR, all the budgets that have been
8 developed for each state become critically important from a regulatory
9 standpoint. They will be included in and used to judge a state's
10 compliance with the new Part 51 rules. Used in this manner, the budgets
11 cannot represent EPA's best guess as to the NOx emissions in each state,
12 they must be accurate.

13 Between the NPR and the SNPR there were several changes
14 made. The overall budgets in Alabama have increased by several thousand
15 tons, while the overall budgets in Georgia have decreased by several
16 thousand tons as a result of these changes, but there are still errors
17 in the budgets. There are currently about 1,100 megawatts of non-Title
18 IV generating units in Alabama and Georgia that are not included in the
19 budgets, and I have attached a list in my written comments.

20 Additionally, when you look at the Census Bureau estimates
21 for population in the States of Alabama and Georgia, Georgia has about
22 twice the population of Alabama in the year 2005, where they have only
half the area source emissions. It is inconceivable that this could
happen between these two states, and that needs to be checked.

Additionally, we have grave concerns about how highway
emissions and mobile source emissions are predicted in the future, and

1 we do not believe these can accurately be predicted with the changes
2 that are going on.

3 Until there is confidence that the mandated budgets are
4 based on reasonably accurate inventories, EPA should not be proposing
5 them as binding regulatory requirements. To date, there is no reason to
6 believe that the budgets are based on accurate inventories.

7 Will the state budgets reduce ozone in the most
8 cost-effective manner? No. Many states and stakeholders presented
9 specific analysis to OTAG to support the need for ozone reduction
10 effectiveness analysis through additional subregional modeling studies.
11 These analyses show that local low-level and mobile sources could be
12 from five to hundreds of times more effective in reducing ozone than
13 elevated point sources. The tools to determine ozone reduction
14 effectiveness are available and should be used by EPA and the states to
15 determine the final budgets.

16 We suffered through OTAG for two years to make the science
17 better, and now EPA does not want to use that knowledge gained to reduce
18 ozone in the most cost-effective manner.

19 Does EPA's SNPR air quality analysis support the regional
20 NOx SIP Call? Again, no. EPA's new modeling analysis does not support
21 the need for region-wide NOx controls. EPA has decided to model the
22 proposed SIP Call budgets for all 23 jurisdictions at one time, with no
regard for determining intra-state emission reduction impacts on ozone
levels.

 Significant OTAG and stakeholder modeling confirmed the
overriding benefits of local non-attainment, area, and state controls,

1 versus distant elevated point source controls. EPA has significantly
2 clouded the picture by not separating these controls and their analyses.

3 Based on our analyses and OTAG information, it is our
4 contention that the vast majority of the ozone benefits in Alabama and
5 Georgia, from the proposed regional NOx reductions, are in reality from
6 NOx reductions within Alabama and Georgia.

7 Will the regional NOx cap and trade program work? Probably
8 not. Southern Company has always supported market-based emission
9 control systems, and this proposed program is no exception. However, we
10 have significant reservations about the viability of a region-wide ozone
11 related NOx trading system.

12 In any event, for a trading system to be truly successful,
13 and reach its goal of significantly reducing costs it must allow for
14 unfettered multi-state trading of emissions, decade-long or longer, if
15 not permanent, allowance allocations, multi-year banking or two-phase
16 reduction programs, coupled with banking, sufficient time to achieve the
17 early reductions or phase reductions, and the final reductions, no
18 mandatory flow controls, unless supported by appropriate analysis,
19 consideration of rate-based programs that achieve the same or similar
20 air-quality goals, determination of the stringency of the emission
21 reduction requirements compatibility with the market-based trading
22 systems. Many states have expressed concern that any trading program
that allows local non-attainment area emission reductions to be
diminished to any degree is not acceptable.

In summary, although market-based programs are important
towards cost-effective achievement of air quality goals, they are not

1 substitutes for accurate emission inventories and budgets, application
2 of good science to determine the most cost-effective ozone reductions,
3 following the law, remembering the goal, which should be cost-effective
4 attainment of the ozone standard, and finally, 45 days is not enough.

5 We would request that we give everybody additional time to
6 weigh in, and add 60 more days to the comment period. Thank you.

7 MR. WILSON: Thank you. I have one question, I guess, for
8 Mr. Miller. Back again on the growth rate issue, I'm not quite sure I
9 understand what you-all would have us do.

10 Again, some of these growth rates, while there have been
11 adjustments to the numbers, the basic assumptions about how to deal with
12 growth rates and using the 2007 budget with growth built in was the
13 premise decided as part of the OTAG process, so are you, in suggesting
14 we not use growth rates, suggesting we start all the inventory modeling
15 work over again and do it that way, or what is it you're suggesting?

16 MR. MILLER: Well, one suggestion as an alternative is
17 because growth rates appear to be somewhat speculative in determining
18 who are the winners and losers by 2007 in these state-differentiated
19 growth rates, one potential suggestion that we are thinking about, and
20 will include in more detailed comments, is the application of a
21 consistent growth rate across the region, and then let an efficient
22 market mechanism decide how it gets distributed among the states, as
differences in growth occur, in fact, in the future, rather than trying
to attempt to predetermine that at this point in time.

MR. WILSON: Well, in your comments I think it would be
useful if you would suggest what process we would go through to make

1 that significant a change in the way we're going about it, and how much
2 additional time you think it might take for the process if we did that.

3 MR. MILLER: Yes, we will.

4 MR. WILSON: Does anybody else have --

5 MR. SEITZ: Yes, just a follow-up, I guess, with Mr. Miller
6 and Mr. Yamada. Mr. Yamada, if I heard your testimony correctly, you
7 seem to be concerned about the utilization of output-based standards at
8 this time, if I heard your testimony correctly.

9 MR. YAMADA: Output-based standards that incorporate more
10 than -- more than fossil-based generation. We have no problem at all
11 with fossil fuel-based generation. In fact, several northeast states
12 are already using that.

13 MR. SEITZ: Okay. Because that's consistent with Mr.
14 Miller's testimony.

15 MR. YAMADA: Well, the output-based approach that we would
16 be advocating is all sources of electric generation.

17 MR. SEITZ: Just one follow-up for Mr. Herrin. I understand
18 you've submitted adjustments to the inventory in your comments, and
19 we're receiving a lot of those submissions, the question about, to
20 paraphrase your testimony, that we should wait until the inventories and
21 all these corrections.

22 I mean we've been working on this for years, it's a dynamic
process by its definition, the inventories. Could you give me a little
definition as to when it is good enough?

MR. HERRIN: Well, I think it has to be good enough to make
it binding, and I don't want to be involved in a regulatory proceeding

1 where you're making binding requirements on the states that I have to
2 live with forever, and everybody else does.

3 MR. SEITZ: Okay.

4 MR. HERRIN: I mean it has to be more accurate than what it
5 is. When it's best, I don't know, but it's not best right now. I mean
6 that's a question I don't know.

7 MR. SEITZ: Thank you.

8 MR. WILSON: I guess, Mr. Herrin, I have one more. On your
9 list of comments on the NOx cap and trade program, I wasn't quite sure I
10 understood it, it's the last bullet point, "The determination of the
11 stringency of the emission reduction requirements compatibility with the
12 market system." What did you mean by that?

13 MR. HERRIN: It's a point we've brought up several times,
14 when you're going to require so stringent of an emission requirement on
15 certain source sectors, how do you know that works as well as something
16 when you didn't require that, such as the SO₂ program, which relatively
17 wasn't that stringent for compliance, and now you're hitting somebody
18 with a .15 or potentially less, if you didn't do the growth right.

19 Is that the same compatibility as something that you've had
20 before? How does it work?

21 MR. WILSON: Do you have an assessment of the implications
22 of our proposal on your system, and I gather you're suggesting you think
that each of the facilities would have to be controlled to the max and
there's not much to trade, is that the implication of your comment?

MR. HERRIN: There's a lot of that going on.

MR. WILSON: Do you have an analysis to support that?

1 MR. HERRIN: We have analysis we've done. It's hard to
2 analyze the issue when you don't know how widely you can trade.

3 MR. WILSON: Well, but assuming -- I mean we're obviously
4 proposing and encouraging states to enter a region-wide trading program,
5 but on that assessment -- it would be helpful if you have an analysis of
6 the implication of the proposal for your system, and what benefits a
7 trading program would have, if you could submit that for the record.
8 Obviously, our own analysis suggests that there's a fair benefit from
9 the trading program.

10 MR. HERRIN: Yes, but I would not want to suggest that open
11 trading is going to be available to me by giving you that analysis.
12 Yes, it will save money, but how do I know it's going to be there? The
13 State of Georgia is not going to allow me to trade with anybody, they've
14 pretty much said that already in their recent suit.

15 MR. WILSON: Well, again, I mean those are state decisions,
16 but --

17 MR. HERRIN: But that's the whole problem. They're state
18 decisions, and I can't tell you how much money it's going to save, when
19 I don't know what the states are going to allow me to do.

20 MR. WILSON: Well, it would certainly be useful for us, and
21 it might be useful for the states if you can demonstrate the benefits of
22 more region-wide trading for your system, rather than assuming the
worst.

 If you could demonstrate what benefits there would be,
assuming region-wide trading, and then also suggest how much of that
you'd lose if there are restrictions, that would allow us to have a data

1 base to be working from.

2 MR. HERRIN: But at the same time the states would want to
3 know what the disbenefits are --

4 MR. WILSON: Well, that's fine. I'm not --

5 MR. HERRIN: -- and I don't have that information.

6 MR. WILSON: Well, it seems to me they can figure that out,
7 if you could tell them if you had a trading program, where you're likely
8 to control, where you're likely not to control, what the economic
9 benefits are, but I mean if you're not willing to provide the data, then
10 you're not -- it's up to you.

11 MR. HERRIN: I'm not unwilling to provide the data, I think
12 it just gets clouded in the whole issue of, will it be there, won't it
13 be there, what are the disbenefits associated with that system, and will
14 the states allow me to do it, and I don't have the time in the next 30
15 days to do that.

16 MR. MILLER: Well, I'd be surprised if you haven't done some
17 of that already, but you're free to submit or not submit it as you want.

18 Thank you all for coming. We appreciate it.

19 The next group, Andrea Field, Donna Boysen, and David
20 Wooley, please. Proceed, please.

21 MS. FIELD: Good morning. I'm Andrea Field, speaking on
22 behalf of UARG.

The SNPR tries to distract attention from the many legal shortcomings of EPA's original SIP Call proposal by adding a market-based trading plan, which EPA claims will greatly reduce the cost of the SIP Call. This attempt to make the SIP Call program less

1 expensive does not make it more legal.

2 First, the SNPR's proposed state-specific budgets are
3 contrary to law. Even if EPA can establish that a SIP is substantially
4 inadequate to mitigate interstate pollution, it is up to each affected
5 state, not EPA, to determine how to remedy that substantial inadequacy.

6 EPA may order a state to revise its SIP only as necessary to
7 correct a substantial inadequacy. Once EPA has called that inadequacy
8 to the state's attention, though, it is the state's job to determine
9 what revisions are necessary.

10 As a D.C. circuit said in Virginia versus EPA, EPA has no
11 authority to require states to insert in their plans control measures
12 that EPA has selected. EPA's state-specific NOx budgets contradict the
13 holding in Virginia of EPA, because those budgets have the effect of
14 telling each targeted state exactly how much it must control its NOx
15 emissions, and they improperly restrict the ability of states to rely on
16 VOC controls to address interstate transport of ozone, even if a state
17 believes that VOC controls are the better way to go.

18 Second, market-based trading programs are not panaceas.
19 Don't misunderstand. UARG members support market-based emission
20 reduction programs wherever they can be used to accomplish Clean Air Act
21 goals, and we strongly believe that trading can be a useful mechanism to
22 achieve emissions reduction cost-effectively, but many states are making
it clear, both in their words and their deeds, that they will not allow
sources in their jurisdictions to participate freely in geographically
broad trading programs where the air quality goal to be achieved is a
narrower one, for example, the reduction of ozone levels in local

1 non-attainment areas.

2 The states are concerned that a geographically broad program
3 will not reduce ozone levels in the specific non-attainment areas of
4 concern to them. If the SIP Call's proposed trading program does not in
5 the end reduce ozone where it needs to be reduced, then it will not
6 produce the large cost savings that EPA is now promising.

7 Third, the specific trading program that EPA has proposed
8 runs afoul of the Clean Air Act requirement that SIP Calls address only
9 necessary SIP revisions. EPA addresses the Act's requirement that SIP
10 Calls be used only as necessary to correct and identify substantial
11 inadequacy by suggesting that it is necessary for each of the 22 listed
12 states to adopt and meet a precise EPA-specified NOx budget.

13 This claim, though, is undercut by EPA's proposed use of a
14 22-state trading program to achieve its NOx reduction goals. If the
15 22-state trading program works as EPA says it will, then some states
16 will get fewer NOx reductions than set out in EPA's budgets.

17 If EPA is saying that it is acceptable for a state to
18 achieve fewer reductions than demanded by the EPA budget for that state,
19 then EPA cannot continue to claim that state's mandated NOx budget is
20 necessary to achieve the air quality objectives that EPA claims underlie
21 its proposal.

22 In short, there is a disconnect between the air quality
concerns that EPA says motivated it to go forward with its regional SIP
Call, and the specific SIP Call program that it has proposed.

 Fourth, even though concerns have been raised as the legal
basis for the 22-state program, we hope that groups of states will

1 follow the procedures of Clean Air Act Sections 176A and 184 to evaluate
2 needed emission reductions, and will allow the use of multi-state
3 subregional trading programs to get those needed reductions, and we
4 would hope that any such multi-state trading programs incorporate the
5 following concepts.

6 First, they should allow individual states to take the lead
7 in making any allowance allocation decisions, including the
8 determination of how allowance allocation should be made to individual
9 states and the timing of allocations.

10 Next, they should include banking, and they should not place
11 unreasonable impediments on the use of banked allowances. In
12 particular, there should not be any mandatory flow control system to
13 restrict the use of banked allowances.

14 Also, they should not require a mandatory first phase of
15 reductions that would apply in the 2001 to 2002 time frame. UARG has
16 underway a study, this is what Sue mentioned earlier, that shows that it
17 is not feasible to achieve the massive SIP Call produced utility NOx
18 reductions by September, 2002, or even May, 2003, a date that is
19 mentioned in the SNPR.

20 It is unthinkable that mandatory reductions beyond existing laws should
21 be imposed even earlier.

22 Next, the modeling and the SNPR does not support EPA's claim
that it needs a 22-state SIP Call to address existing ozone
non-attainment. The only modeling that EPA has presented in the SNPR
evaluates the impacts of NOx reductions in all 22 states simultaneously.

Since that modeling does not distinguish between the effects

1 of local controls and the effects of other upwind controls, it does not
2 support EPA's claim that the agency needs NOx reductions from all 22
3 states in order to address existing ozone non-attainment.

4 We understand that EPA has modeling underway to address this
5 point. If that modeling is done, though, there is no assurance that it
6 will be made available for meaningful comment by the public.

7 Finally, the comment period in the SNPR should be extended.
8 As the original comment period was 120 days, we recommend that that be
9 the comment period for the SNPR as well.

10 In summary, the SNPR adds bells and whistles to the basic
11 SIP Call program that EPA proposed last fall, but those bells and
12 whistles do nothing to make its illegal SIP Call program any less
13 illegal.

14 MR. WILSON: Thank you. Ms. Boysen.

15 MS. BOYSEN: Thank you. Good morning. I'm Donna Boysen,
16 speaking on behalf of the Ozone Attainment Coalition today. The
17 Coalition is composed of fourteen organizations, including nine
18 Northeast-based electric utilities, and national, Northeast, regional,
19 and state-based environmental advocacy groups, and we're pleased to be
20 able to provide comments to EPA today on the supplemental notice. We'll
21 provide further written comments by the end of the comment period.

22 Our first comment today is that the SIP Call program should
be fully implemented by May 1, 2003. The environmental benefits of
emission reduction from the SIP Call can and should be delivered through
the simultaneous implementation of the SIP Call across all 23
jurisdictions by no later than May 1, 2003.

1 From an air quality perspective, this will substantially aid
2 in the timely attainment of both the one-hour and eight-hour forms of
3 the ozone standard. From the feasibility perspective, the availability
4 of an emission trading mechanism will provide flexibility to ensure
5 cost-effective and timely compliance with the state.

6 Our second comment is that the air quality case has been
7 made for an average NOx emission rate of .15 pounds per million BTU for
8 large electric generators that's applied uniformly across the entire SIP
9 Call region, and the Coalition strongly supports this. The uniform
10 application of the .15 rate is critical to achieving the transport
11 reductions needed for the downwind areas, and the following three points
12 support this conclusion, and also clarifies the upwind air quality
13 benefits that would be realized as well.

14 First, EPA's additional air quality modeling information
15 provided in the SNPR supports the need for a uniform rate. Results for
16 each of the so-called problem areas, including Charlotte, Nashville,
17 Richmond, and Pittsburgh, show a meaningful reduction in ozone
18 concentrations as a result of the regional implementation of the .15
19 average rate, indicating that not only downwind areas, but also upwind
20 areas in the Midwest and elsewhere realize these benefits.

21 Second, the proximity of the affected power plants to
22 one-hour non-attainment -- ozone non-attainment areas -- supports the
need for the uniform application of the .15 rate. Ninety-two percent of
the affected power plants are located within 150 miles of at least one
one-hour ozone non-attainment area within the SIP Call region.

 Third, CALGRID modeling results support uniformity as well.

1 Comments already on the NPR docket discuss the use of the CALGRID model
2 to compare the air quality effects of implementing a .15 pound per
3 million BTU requirement on utilities located only in the OTR versus
4 implementing the same .15 rate across the larger SIP Call region.

5 The results indicate that meaningful reductions in the
6 concentrations of ozone are realized across a large portion of the SIP
7 Call region where NOx reductions are implemented throughout; however,
8 the .15 rate applied only to the OTR shows substantially less benefit in
9 the OTR, and obviously shows no benefit to the upwind areas.

10 It should be noted that the New England states are now using
11 the CALGRID model instead of UAM-V for modeling SIP attainment in the
12 New England domain.

13 Our third comment addresses the concern that a .15 pound per
14 million BTU average is too low to allow for trading. The Coalition
15 asserts that this is simply not the case. The concerns about abilities
16 to generate credits under an average .15 rate are not borne out in
17 practice.

18 Plenty of examples can be cited of new generation units and
19 retrofitted units that operated at NOx emission rates well below .15
20 this year. In the acid rain data base, 24 plants have rates under .15
21 as of 1995, and that doesn't include IPPs.

22 Further, as additional units implement measures to comply
with the NPR requirements, the presence of a trading program will
provide the incentive for many more units to over-comply and operate
below the .15 pound per million BTU target.

Our fourth comment is that the model NOx cap and trade

1 program should be as fungible as possible with the NOx budget program
2 that will already be operating in most of the OTC.

3 The fact that the region affected by the SNPR includes nine
4 out of the twelve OTC NOx budget states raises an obvious concern about
5 possible inefficiencies, if the OTC NOx budget program and the model
6 rule are not well coordinated. Because the SNPR model rule is still in
7 draft form it should be finalized with the goal of producing as seamless
8 an interface as possible with the NOx budget program.

9 A fifth comment is that the Coalition supports the provision
10 in the SNPR for a recommended allocation methodology for states, while
11 providing them with the option of developing an alternative methodology.
12 SIP's comment is that the Coalition strongly supports EPA's inclusion of
13 timing deadlines for states to complete their respective allocation
14 methodologies and submit them to EPA.

15 In closing, the Coalition commends EPA on the high quality
16 of this proposal. We appreciate the thoughtful resolutions that have
17 been applied or proposed to many of the complex issues associated with
18 this effort. Thank you.

19 MR. WILSON: Thank you. Mr. Wooley.

20 MR. WOOLEY: Good morning. My name is David Wooley, I'm a
21 professor of environmental energy law, Pace University. I'm appearing
22 today on behalf of 17 environmental groups, including the Citizen Action
Coalition of Indiana, Conservation Law Foundation, Delaware Valley
Citizens for Clean Air, Environmental Advocates of New York, Hoosier
Valley, Hoosier Environmental Council, Illinois Environmental Council,
Isaac Walton League of America, Midwest Regional Office, Legal

1 Environmental Assistance Foundation of Florida, Michigan Environmental
2 Council, Natural Resources Council of Maine, New York Public Interest
3 Research Group, Ohio Environmental Council, Pollution Probe of Ontario,
4 Southern Environmental Law Center, Wisconsin's Environmental Decade, and
5 although the American Lung Association is not on the written statement,
6 they did endorse the statement last night.

7 I think it's particularly appropriate that EPA is holding a
8 hearing on a day when The Washington Post indicates in the air quality
9 index that today's forecast is all the way over to the extreme edge of
10 unhealthful, in terms of air quality, specifically referencing ozone.

11 As stated in our February oral comments and written comments
12 in March, these 17 groups strongly support the general purposes and
13 direction of EPA's NOx SIP Call regulation. We need to achieve very
14 large reductions in nitrogen oxides in order to reduce ground-level
15 ozone, acid rain, fine-particulate pollution, coastal water hypoxia.

16 The health and environmental advantages of this rule are
17 very well documented. The reality of long-range transport is
18 established. The costs of achieving the controls is reasonable,
19 especially considering the massive health and environmental benefits to
20 lakes and lungs, bays and babies.

21 We urge EPA to move swiftly. Action is needed now to
22 protect children, the elderly, and people with chronic lung disease.

We are, however, disappointed with several aspects of the
supplemental rule. It makes no sense as an environmental or energy
policy for EPA to consider granting emission credits to the nuclear
industry while proposing to deny allocation of such credits to energy

1 efficiency. It makes no sense to us to weaken the NOx cap.

2 We are quite unhappy that the utility and the industrial
3 portions of the NOx cap have been raised by 15 percent. This is
4 unwarranted, given the modeling in the supplemental rule and in the tier
5 two mobile source study that indicates that we will have continual ozone
6 non-attainment in many areas, the Midwest, Southern, Mid-Atlantic, and
7 Northeastern states, even after all of these controls are put in place.

8 This means that states and EPA will necessarily have to go
9 after additional reductions to forego controls, and the lowest cost
10 opportunity for large sources is going to doom the states to be looking
11 at smaller sources, scratching in the dust for small gains, while a
12 fleet of aging, inefficient power plants continue to spew out NOx, SOx,
13 and toxics at unacceptable levels. EPA should lower the cap.

14 There are several ways to do it. We've recommended
15 abandoning setting the cap on the basis of future generation levels.
16 I'd appreciate Mr. Carhart's suggestion regarding growth of new sources.

17 We're very concerned about delay. There are many places in
18 the rule that it talks about the need for additional analysis, perhaps a
19 supplemental notice of proposed rulemaking. There's no time to waste,
20 EPA has to finish this rulemaking this year. We hope you'll do it
21 September.

22 Just to re-emphasize, the environmental community, at least
the ones I represent, have zero tolerance for a NOx SIP Call that
includes a nuclear credit allowance, a weak cap, or significant delay in
implementation. We think this rule can be fully implemented and
complied with before the ozone season of 2003.

1 A couple of points that we strongly support in the
2 supplemental. The finding of significant contribution is fully
3 justified. The reduction is needed to protect the public in all
4 regions. You'll note a substantial number of Midwestern groups
5 supporting our statement.

6 We strongly support the concept of cap, based on uniform
7 control levels. The uniform monitoring and verification requirements
8 are not only welcome, but essential to the effectiveness of the rule.

9 I just conclude by stating that we hope you will finalize
10 the rule in September, 1998, with implementation by May, 2003. We hope
11 you will establish a cap based on uniform control levels across all
12 states.

13 We urge you to tighten the cap, and we hope you will reject
14 the fuel neutral allocation alternative, and limit credits to fossil,
15 renewable, and energy efficiency. We'll submit written comments.

16 I just want to note that Bernard Melewski of the Adirondack
17 council had planned to be here today, he is on the schedule. He was
18 detained by events in New York, and he asked me to remind you of the
19 continuing problem of acid deposition in the Adirondacks. This rule is
20 a step in the right direction, but the agency will have to move further
21 to establish an annual NOx cap and tighter SO₂ caps.

22 Thank you.

MR. WILSON: Okay. Thank you. I had a couple of questions,
Mr. Wooley, from your testimony. First, on the allocation process, can
you give a little more detail on why you oppose the generation-based
concept, where some allocations would be given to the nuclear plants?

1 MR. WOOLEY: I think it's important to recognize that in
2 regard to radioactive waste production and disposal, and safety risks,
3 that these are aspects that go far beyond the scope of the regulation
4 under consideration.

5 So in a sense, the proposal to allocate the nuclear treats
6 that industry as if conventional air pollution were the only issue, and
7 it's not, and we think that it is appropriate to separate them out,
8 because of those unique characteristics.

9 MR. WILSON: Do you think it would encourage more nuclear
10 plants, or what's the -- I'm still not quite sure I understand the
11 concern.

12 MR. WOOLEY: If the agency were to grant emission credits
13 for a variety of air pollutants to this industry, cumulatively, those
14 things could be a significant economic advantage for nuclear power
15 plants.

16 MR. WILSON: The second area, that's one I asked a couple of
17 others about, too, I have a hard time, it seems inconsistent. You want
18 us to get this rule out in September, yet you seem to want us to abandon
19 the approach we picked up from OTAG on dealing with growth rates, and
20 adopt a different approach. Those seem inconsistent to me. Can you
21 help?

22 MR. WOOLEY: I don't believe they are. I think that what
we've suggested, by using existing plant utilization, that's data that
you already have. We're suggesting a simple vacation of the rule, not
one that will make it more complicated.

 MR. WILSON: But all the supplemental analysis and modeling

1 was done on one set of assumptions, so are you -- I don't mean to put
2 you too much on the spot now, but if you could think that through in
3 terms of any other written comments.

4 MR. WOOLEY: In our written comments in the last round, we
5 suggested what the effect would be on the total cap. It would reduce
6 the cap by something like 15 percent, so that I think you can make
7 adjustments to your modeling results to reflect a tighter cap. That
8 shouldn't be that difficult.

9 MR. STOLPMAN: Donna, you made the point that you hope that
10 the model trading rule would be compatible with trading that's taking
11 place for the program in the OTR. Have you submitted specific comments,
12 or do you have -- could you just summarize your perspective on that, on
13 how we might best do that?

14 MS. BOYSEN: I think the clarification that I would make at
15 this time, we certainly will go into probably tedious detail in the
16 written comments, but at this point I'd say that we'd like to
17 distinguish between having the programs be compatible in every possible
18 regard on every parameter, and having the systems be fungible, as far as
19 trading is concerned.

20 So where things like early allowances are involved, or maybe
21 the banking assumptions, it seems like those would be important to help
22 ensure that the utilities participating in both programs can do so in an
efficient way.

MR. SEITZ: I have one, too, Donna. At the very start of
your testimony you seemed to on one hand indicate and agree with some of
the testimony earlier about the location of these power plants and the

1 need to control the .15, and, in fact, I guess cited some of the
2 Northeast experience on that, and you also said, or did you mean to say
3 that even these plants that are in close can control the .15 as
4 cost-effective, and still can trade.

5 MS. BOYSEN: Certainly, some companies will, yes.

6 MR. SEITZ: Okay. Thank you.

7 MS. BOYSEN: .15 trade, I just want to make sure I
8 understand the question right. Right.

9 MR. SEITZ: So you think the data, and I'd like to, again,
10 if you used our own data, or would like to submit it for the record, the
11 information showing that the control levels of .15 for power plants in
12 close could still take place at a cost-effective level, and they could
13 still trade.

14 MS. BOYSEN: On average. The .15 is an industry average.
15 Right. There will be generating sources that can operate under that and
16 create credits.

17 MR. SEITZ: Okay. Thank you.

18 MR. WILSON: Thank you all for your testimony. We
19 appreciate it.

20 The next group, Benjamin White, Elizabeth Lanier, and Dr.
21 John Gray, please. Mr. White.

22 MR. WHITE: Yes.

MR. WILSON: Good morning.

MR. WHITE: Good morning. I'm Ben White, I'm the Manager of
Environmental Services for Carolina Power and Light Company, based out
of Raleigh, North Carolina. We're an investor-owned utility, serving

1 approximately 1.1 million residential customers in North and South
2 Carolina. We have 5,300 megawatts of installed coal-fired generation
3 capacity on our system that would be potentially affected by the NOx
4 budget identified in the rule.

5 At the February public hearing on this proposed rulemaking I
6 began my oral comment by saying that EPA's proposed NOx budget for North
7 and South Carolina is absolutely not, in our opinion, supportable.

8 The information offered by the EPA in the supplemental
9 notice doesn't change our belief that the NOx budget for North and South
10 Carolina cannot be supported, based on our view of the data and the law,
11 as they relate to the interstate transport under Section 110 of the
12 Clean Air Act. I would also state that we fully endorse the comments
13 offered by the Utility Air Regulatory Group.

14 In my remaining time allowed for comments, I'd like to make
15 a few brief points. First, we have continuing and grave concern for
16 EPA's schedule for this rulemaking. The comment period of 45 days for
17 this supplemental notice is yet one more example of unrealistic and
18 unreasonable schedules imposed by the agency.

19 We strongly urge EPA to offer additional time for comment on
20 the materials contained in the November 7, 1997, proposed rule, as well
21 as the materials contained in the supplemental notice.

22 The supplemental notice contains nearly a hundred pages of
text and tables. Most of the information has only recently been added
to the docket or placed on the Internet, and we've simply not had
adequate opportunity to review these materials. The emissions data
reflecting the revised budget is needed for photochemical modeling, and

1 was released only a few days before the supplemental notice.

2 There has been insufficient time for outside parties to
3 evaluate the EPA's analysis or offer modeling to supplement the record.
4 EPA, in our opinion, has essentially precluded the opportunity for
5 meaningful participation by the public in this rulemaking process.

6 Additionally, we urge EPA to extend the date for
7 promulgation of final action in this rulemaking as well as the time when
8 industry would need to be in compliance.

9 We cannot emphasize strongly enough our belief that there
10 would likely be serious problems with the reliability across the Eastern
11 U.S., unless the agency allows more time for the utility sector to
12 design, procure, and install emission control equipment in a manner
13 which will maintain adequate generation and reserve margins. CP&L urges
14 your reconsideration of the compliance schedules.

15 Second, with regard to establishing a NOx budget for the
16 states, we believe that the EPA has not adequately demonstrated that
17 there's consistency across the states in the NOx budgets or between
18 different source sectors. The emission inventories for the states,
19 which form the basis for the budget, are of varying quality, despite
20 numerous attempts to identify and correct the problems.

21 The need for a budget revision as a portion of this
22 supplemental notice is a clear example of a major flaw in the original
budget review effort. We believe there are many other budget problems.
Some form of independent certification of the assembled budgets, any
subsequent budget adjustments, and the periodic emission reports
submitted as SIP compliance demonstrations would reduce concern about

1 budget consistency and credibility.

2 Third, with regard to the NOx trading program, CP&L believes
3 that it is extremely unlikely that a viable interstate trading program
4 will emerge in order to offer any opportunity for cost savings by the
5 utility sector.

6 We support in concept emission trading programs, however,
7 when considering the near-term compliance deadline, the uncertainty in
8 state actions regarding trades and the level of the reductions in the
9 utility sector, we see serious problems with such a program.

10 EPA must be more forthright in representing to the public
11 the estimated costs for a command and control scenario, and avoid
12 speculative claims that may misrepresent the viability of a market-based
13 trading system.

14 Lastly, I'll restate that EPA simply has failed to date to
15 provide technical justification for any additional level of emission
16 reduction in North and South Carolina. There are no ozone
17 non-attainment areas in North or South Carolina at this time.

18 The modeling provided to EPA in the proposed notice
19 supported a conclusion that emissions from the Carolinas do not
20 contribute significantly to ozone problem areas in the Northeastern
21 U.S., Atlanta, or the Great Lakes areas.

22 The Clean Air Act defines an orderly process for
designations and evaluation of areas which do not meet the new
eight-hour standard, and we believe the agency is acting prematurely and
without support of the Clean Air Act, and using future non-attainment of
the eight-hour standard as support for the budget.

1 We urge EPA to delay a decision on any budget with regard to
2 North and South Carolina. The emissions and emission transport
3 potential for these two states is not different from several of the
4 coarse grid states. There is, therefore, an adequate basis for the EPA
5 to delay the decision on a budget for the Carolinas until additional
6 modeling to address the eight-hour non-attainment areas is available.

7 Thank you for the opportunity to comment. We'll be
8 outlining our position in more detail before the close of the comment
9 period.

10 MR. WILSON: Thank you. Ms. Lanier.

11 MS. LANIER: Thank you. I'm Elizabeth Lanier, Vice
12 President and Chief of Staff of Cinergy Corporation.

13 I am pleased to be able to make comments today on behalf of
14 Cinergy, which has 1.4 million customers in Indiana, Ohio, and Kentucky.
15 We have the dubious honor of being 98 percent coal-fired.

16 Cinergy is a member of the Alliance for Constructive Air
17 Policy, and supports the comments that will be made shortly by Bob Wyman
18 on behalf of ACAP. Cinergy supports all efforts to develop innovative
19 and cost-effective solutions to environmental concerns, including the
20 SIP Call, the ACAP proposals designed to be able to achieve comparable
21 air quality improvements in a more cost-effective manner, deserve
22 serious consideration that we are concerned is not being made available
at the agency level.

 ACAP proposal calls for a phased approach, with guaranteed
NOx emissions, followed by subregional modeling. This proposal reflects
the different value of a ton of NOx reduction in the Midwest and

1 Southeast from that same ton's reduction in the Northeast.

2 In addition, Cinergy supports the initiative undertaken by
3 ten Midwestern and Southern governors to develop an alternative to the
4 one-size-fits-all SIP proposal. Cinergy urges EPA to be receptive beyond
5 what apparently is its receptivity level, and to engage in meaningful
6 discussions of all alternatives. Cinergy intends to provide written
7 comments. I'll highlight five areas of concern today orally.

8 Cinergy supports the allocation of NOx emission allowances
9 to the states based on heat input. Of course, Cinergy believes that
10 it's the state's prerogative to decide how best to meet SIP inadequacy,
11 including how and whether to set budgets. Regulation of combustion
12 sources has traditionally been based on heat input.

13 Virtually, every SIP limit relating to utility units is
14 stated in terms of pounds per million BTU. The Title IV NOx limits are
15 stated in these terms. Our CEMs collect utility emissions data, based
16 upon this measure. EPA and state agencies already have the necessary
17 data to make heat input determinations.

18 Using a megawatt output allocation scheme will require
19 environmental agencies, at our expense, to collect new data. The SIP
20 budgets are based on heat input, and should remain that way.

21 Another issue on which the EPA seeks comment is whether to
22 include unaffected sources. We believe this makes no sense.
Specifically, you are including the inclusion of non-emitting sources on
a megawatt output basis. Since these sources will not require emission
allowances to operate, it is unreasonable for them to be included in
this calculation.

1 Including these sources will skew the distribution of
2 emission allowances, taking allowances from states that have fewer
3 nuclear units, such as Ohio, Indiana, and Kentucky, and transferring
4 those to states with more nuclear generation, such as New Jersey and New
5 York.

6 Ironically, this proposal will have the illogical effect of
7 giving states with serious and severe non-attainment more allowances,
8 and states without serious or severe non-attainment areas, fewer
9 allowances. It's simply illogical. There's no technical support for
10 including non-emitting sources in the budget allocation, and we believe
11 that this position should be abandoned for further inquiry by the
12 agency.

13 Cinergy believes that the control of ozone should be done in
14 a cost-effective manner. That's why we worked to form a cap, and that's
15 why we support its efforts going forward. Cinergy believes that the
16 wrong measure for cost-effectiveness is being used in the SIP Call and
17 in the SNPR.

18 You're using a dollars-per-ton of NOx removed without regard
19 to air quality impact. Cinergy believes that cost-effectiveness for
20 meeting ozone air quality should be based on a dollars-per-part per
21 billion ozone removed.

22 Cinergy believes that if a dollars-per-part per billion
measure were used to determine cost-effectiveness, that the strategy
would be different. For example, accounting for the contributions of
both NOx and SOx in ozone formation would be included, and evaluating
the relative cost-effectiveness of local control options would be

1 considered.

2 Cinergy also believes that there are concerns about the
3 modeling, which you-all have proposed in support of this very expensive
4 rule. You have rushed to an SIP Call schedule that has caused you to
5 ignore the many technical corrections that have been proposed in prior
6 hearings, and have been supplied in written form.

7 The EPA's 22-state modeling continues to ignore OTAG's
8 recommendation that broad brush regional modeling will not be able to
9 distinguish local in-state and out-of-state emission control
10 effectiveness.

11 In light of the errors and omissions found in the data bases
12 relating to utilities, and your continuing changing NOx emission budget
13 inventories from point sources, we believe that it is doubtful that
14 there's enough time to set final and correct budgets within the time
15 limits that you've set.

16 Finally, Cinergy supports achieving the necessary reductions
17 in a cost-effective manner through open and flexible trading within
18 appropriate subregions, and creating a clean air investment fund, as we
19 have proposed before. We support early banking opportunities, credits
20 with infinite life, and minimally burdensome opt-in restrictions.

21 Thank you.

22 MR. WILSON: Thank you. Dr. Gray.

 DR. GRAY: Good morning. My name is Dr. John Gray, I'm the
immediate past president of the Ontario Medical Association, the
professional association which represents the 23,000 physicians
practicing in Ontario, Canada. Accompanying me today is the

1 association's Executive Director of Health Policy, Dr. Ted Boadway.
2 Before I begin, I can assure you I am familiar with the red light
3 system, we use it in Ontario, and five minutes is the same on either
4 side of the border, so I will try to keep it within the time.

5 MR. WILSON: Okay.

6 DR. GRAY: Thank you for the opportunity to testify this
7 morning in support of the EPA's proposal to require NOx emission
8 reductions, in order to reduce the transport of ground-level ozone and
9 its precursors. On May 12th, the Ontario Medical Association released a
10 major position statement on the health effects of ground-level ozone,
11 acid aerosols, and fine particles.

12 Our research for the statement led us to conclude that air
13 pollution of this type is a public health crisis in Ontario and in some
14 other part of Eastern Canada. Our research focused on studies conducted
15 in Ontario.

16 It tells us without doubt that increases in ground-level
17 ozone, acid aerosols, and particulate matter are directly linked to
18 increases in hospitalization for respiratory and cardiac disease.

19 These effects are diverse, ranging from sub-clinical
20 effects, to increased hospitalization and premature death. The most
21 sensitive subgroups include the elderly, those with cardiac and
22 respiratory diseases, and children.

Children's exposure to and risk from ambient air pollution
can be greater than adults, because they breathe faster and in
summertime, when the highest pollution episodes occur, spend more time
outdoors.

1 The medical effects of air pollution are now solidly
2 established. We know how ozone and acid aerosol exposure inflames the
3 smallest airways, called the bronchioles. These are the airways we
4 depend upon to finally deliver air to our lungs' alveoli where oxygen
5 absorption takes place. What many people do not know is that research
6 done in the laboratory and in the community both show that ozone and
7 acid aerosols give a chemical burn to these bronchials in every person
8 exposed. The resulting inflammation decreases air flow and the ability
9 to absorb oxygen. Each of us has had this happen to us on smog days.

10 If we are healthy, we have enough reserve lung capacity to
11 accommodate, but those with emphysema, chronic bronchitis, heart
12 disease, and especially children, and those with asthma suffer serious
13 and sometimes fatal effects.

14 We in Ontario have been the research subjects, whose
15 reaction to increased air pollution exposure has been measured by both
16 Canadian and American scientists. Residents of the Northeastern United
17 States, who experience much of the same pollution exposure, are no doubt
18 reacting in the same way.

19 For example, the Centers for Disease Control and Prevention
20 recently announced that throughout the U.S. the number of asthma cases
21 rose 75 percent between 1980 and 1994, due in part to pollution and
22 other environmental factors.

 Canadians and Americans have a communal responsibility to
deal with this problem since emissions from each country affect the
other. SOx and ozone precursors, like NOx, for Midwestern U.S. power
plants, which you are considering today, are transported into Ontario.

1 Both NOx and SOx emissions from Ontario hydro's coal-fired
2 power plants reach the Adirondacks and other nearby U.S. locations.
3 Emissions from the U.S., Midwest, travel in Ontario, pick up emissions
4 from Ontario sources, and fall out into the Northeastern states.

5 In other words, when it comes to air pollution and its
6 effect on the health of our citizens and our environment, neither
7 Ontario nor the Northeastern United States can solve its problems alone.

8 In our position statement, copies of which we have provided
9 you today, the Ontario Medical Association has made a number of
10 recommendations, which include the following. Both Canada and the
11 United States must legislate more stringent SOx and NOx emission limits.
12 In the case of sulphur-dioxide, we recommend a 75-percent reduction from
13 current cap levels.

14 Future electricity structuring legislation must maintain
15 stringent SOx and NOx emission limits, and must place greater emphasis
16 on non-polluting energy generation. The California standard of 30 parts
17 per million of sulphur and gasoline must be adopted. This is
18 particularly critical in Ontario, where sulphur levels in fuels are the
19 highest in North America.

20 Physicians must advise patients about the risks of smog
21 exposure, and should continue to advocate stringent air pollution
22 policies.

 In closing, I'd like to express the entire Medical
Association's wholehearted support for the EPA's initiative in working
towards reductions in power plant NOx emissions.

 We want to offer you any other assistance we can provide as

1 you continue your work, and to urge you to resist the arguments of those
2 who have maintained the status quo. The actions you are planning to
3 take under Section 110 will materially affect the health of many of
4 Ontario's 10 million residents, and we strongly support your initiative.

5 Thank you.

6 MR. WILSON: Thank you very much for taking the time to
7 travel down here, Dr. Gray, and you did it perfectly. We appreciate it.

8 Ms. Lanier, I had a couple of questions. One, on the
9 output-based issue, we proposed as part of our new source performance
10 standard, and output-based concept as well, under the theory that it's
11 helpful for us to be finding ways of stating standards that support more
12 efficient ways of generating electricity.

13 Your statement doesn't comment on the pros and cons in that
14 regard, it seems to just focus on the data collection issue. Do you
15 think it's generally a bad idea to look at output-based approaches?

16 MS. LANIER: As I understand the proposal, or the inquiry
17 area that you are looking into, what would occur from the examination or
18 use of an output-based standard would be a distortion of what I think
19 we're all trying to work towards a solution for, which is acceptable
20 levels, cost-effective levels of NOx reduction.

21 Because an output-based approach, where allowances were
22 awarded on an output base, would distort the allowances to give them to
non-emitting sources, we don't believe that an output-based system makes
sense.

MR. WILSON: I understand. Maybe it's something for your
written comments, but they are really two separate issues. One is do

1 you use an output-based approach versus an input-based approach in
2 setting the standard, the other is how do you go through the allocation
3 scheme? Do you include non-nuclear facilities or not, in that? And I
4 think those are somewhat separable issues, although obviously some of
5 the proposals would combine both.

6 So if you could separate the two in your comments it would
7 be --

8 MS. LANIER: We will certainly address in the written
9 comments, those issues separately.

10 MR. WILSON: Okay.

11 MS. LANIER: I would also say, though, that it is very
12 costly for us to maintain the CEMs, and those are on a heat-input base,
13 and we would resist any effort to, in a costly manner, collect
14 additional data, but we will certainly comment in the written comments
15 on --

16 MR. WILSON: Well, it would help if you could go through
17 what you think it would cost in -- to get the data for an output-based
18 system, too.

19 The other question I had is with regard to the trading
20 program. You suggested an open, flexible trading program with
21 appropriate subregions. What do you mean by appropriate subregions?

22 MS. LANIER: Well, it is, I think, a clearly articulated
position from these comments and prior comments, that we believe that
there are cost-effectiveness issues that should be addressed in the
trading program that relate to the fact that a ton removed in the
Southeast, the Northeast, or the Midwest does not address issues on a

1 distant basis as it does on a local basis.

2 I gather your own data from the trading on the SO₂ trading
3 program actually bore out the fact that most of the trading was done on
4 a relatively localized basis.

5 For our purposes, we are assuming that there are subregions
6 within the 22 states, that it would be appropriate for trading between
7 and among, and obviously, it reflects our notion that there need to be
8 differentiated rates within those regions.

9 MR. WILSON: Do you have a particular proposal of what the
10 subregions would be?

11 MS. LANIER: At this time we do not have a particular
12 proposal. Perhaps there will be one articulated before the June 25th
13 comment period. I believe also the work of the Midwest and Southeastern
14 governors will address the regions, but I'm happy and comfortable for
15 the record saying that we do not believe that 22 states at one rate
16 makes sense, either from a cost-effectiveness point of view or an air
17 quality point of view, and we believe that the trading program should be
18 tailored to reflect those realities.

19 MR. WILSON: Okay. Thank you.

20 MR. SEITZ: Mr. White, one question for you. You said in
21 your testimony that you believe the approach we were on would result in,
22 I think you said the reliability of the electric generation would be
endangered. Could you make sure you submit for the record the data
supporting that statement?

MR. WHITE: Okay. I will.

MR. STOLPMAN: Dr. Gray, I think it would be helpful if we

1 -- obviously, you are here making the statement, but I noticed in your
2 written document you're also making suggestions for what Canada or
3 Ontario should do. It would be helpful if you have data on what either
4 Ontario or Canada are doing to control NOx, or whether efforts are being
5 made, or have been proposed up there with regard to control of nitrogen
6 oxides for ozone levels as well.

7 DR. GRAY: We certainly would be happy to provide you in
8 written form the efforts that have been established recently in both
9 Canada and Ontario. The health community certainly believes that the
10 efforts to date have been inadequate in Canada, and, in fact, is asking
11 both levels of government to look at what's happening in the United
12 States for some leadership, because, quite frankly, we don't believe we
13 have it in Canada at the moment.

14 MR. STOLPMAN: Thank you.

15 MR. WILSON: Thank you all very much for taking the time to
16 come today, we appreciate it. I'm going to do one more panel and then
17 take a short break.

18 The next panel is Robert Wyman, Eugene Peters, and David
19 Flannery. Mr. Melewski, as we heard earlier, won't be here from what
20 was previously this panel, and then Mr. Murphy from Allegheny Power, I
21 understand, won't be here, either, so we are combining a couple of
22 panels here.

Good morning, Mr. Wyman, would you like to start?

MR. WYMAN: Good morning. My name is Bob Wyman, and I'm a
partner with the law firm of Lathan and Watkins, and representing the
Alliance for Constructive Air Policy this morning.

1 ACAP is a coalition of utilities, labor, and other
2 organizations from states in the Midwest, Mid-Atlantic, Great Lakes, and
3 Southeast regions. ACAP is committed to working with key policy makers
4 to develop a framework for addressing ozone transport that relies on the
5 best available air quality modeling and economic data.

6 As ACAP has previously emphasized, regional NOx controls
7 have a legitimate role to play in states' strategies to attain the ozone
8 standards. However, these controls should be cost-effective, and should
9 recognize environmental and economic differences among the eastern
10 states.

11 EPA has instead adopted a rigid one-size-fits-all approach
12 that would require uniform emission reductions at the 85 percent level
13 for utilities across the 22-state region.

14 Building on the OTAG recommendations, ACAP has instead
15 proposed a cheaper, smarter, and better approach for addressing ozone
16 transport. The ACAP proposal would provide for an initial 55 percent
17 emission reduction by utilities from 1990 rates, or an emission limit of
18 .35 pounds per BTU heat input, whichever is less stringent.

19 These initial reductions would then be followed by refined
20 subregional modeling and targeted supplemental reductions, where needed,
21 to attain the new eight-hour ozone standard. These additional control
22 requirements would be implemented by the summer of 2007.

ACAP continues to believe that its proposal represents a
fairer, more cost-effective alternative to the SIP Call. We are pleased
that the governors of ten states in the Midwest and Southeast have
written to President Clinton to express their concern about EPA's

1 proposal, and have committed to developing a new framework for regional
2 NOx controls. We look forward to reviewing the governor's proposal and
3 hope that it will stimulate a productive dialogue among these states,
4 the EPA, and the regulated community.

5 We are disappointed that the EPA supplemental notice of
6 proposed rulemaking devotes little attention to the alternative
7 approaches proposed by ACAP and others, and touches only briefly on the
8 option of differential subregional control levels that reflect the
9 relative contribution of sources in different states to downwind
10 non-attainment problems.

11 The additional EPA modeling described in the SNPR provides
12 no evidence that upwind controls will contribute measurably to reduced
13 ozone levels in receptor areas hundreds of miles away.

14 On the other hand, considerable modeling has been conducted
15 since the completion of the OTAG process, which confirms that the bulk
16 of downwind ozone benefits are achieved within short distances of the
17 sources subject to control.

18 This modeling, including comprehensive state-by-state source
19 apportionment analysis performed for ACAP by Environ Corporation, will
20 be described in our supplemental comments.

21 We believe that this new information greatly strengthens the
22 rationale for differential control levels across the OTAG region that
reflect the air quality needs of different states and the relative
benefits of NOx controls at different locations upwind from
non-attainment areas.

In addition to our disappointment with EPA's failure to

1 propose subregional control targets, ACAP is very concerned that EPA is
2 considering state-by-state NOx budgets for utilities based on
3 electricity output, as opposed to growth-adjusted fuel input.

4 If the goal of the SIP Call is to control upwind emissions
5 which are impacting ozone concentration in downwind states, EPA's NOx
6 budgets for each state should reflect its proportional contribution to
7 downwind non-attainment, and the relative cost-effectiveness of
8 controlling upwind NOx sources, as opposed to those in the target
9 non-attainment area.

10 The electricity output of a state's utilities is wholly
11 unrelated to these air quality considerations. Moreover, an
12 output-based approach would unfairly reward states that have
13 historically relied on non-fossil fuel energy sources, like nuclear
14 generation, and disadvantaged states which have invested in coal-fired
15 plants.

16 The approach doubly burdens coal-fired power plants by
17 requiring the greatest reductions from them, but giving them a
18 disproportionately low share of the necessary allocations. ACAP has
19 carefully reviewed the model trading rule included in the SNPR.

20 Our members support emissions trading as an efficient
21 market-driven tool for implementing NOx controls, and believe that a
22 flexible multi-state trading regime needs to play a central role in the
ozone transport strategies adopted by EPA and the states.

 We are concerned, however, that the current design of the
SIP Call is not conducive to realizing the benefits of allowance
trading, and our concerns are two-fold. Application of a stringent .15

1 pound per million BTU emission limit by a 2003 deadline will
2 circumscribe the compliance flexibility of affected utilities to the
3 point where there will be few, if any, tradable NOx allowances.

4 For this reason, it is doubtful that the SIP Call will
5 create a liquid trading market that offers substantial cost savings to
6 regulated sources.

7 You have the remainder of my comments in writing. There are
8 several specific concerns about your trading program, which we urge you
9 to take into consideration. Thank you.

10 MR. WILSON: Okay. Thank you very much. Mr. Peters.

11 MR. PETERS: Thank you. My name is Gene Peters, I'm from
12 the Electric Power Supply Association. Today I am here also with
13 Tiffany Elliott, who works with me. The Electric Power Supply
14 Association is a national trade association representing competitive
15 power suppliers, developers, and marketers of power.

16 As far as environmental protection is concerned, we have
17 consistently advocated market-based programs, whose regulatory framework
18 is consistent, and we emphasize this with the emerging competitive
19 marketplace.

20 The watch word really for the electric power industry today
21 is change. We know one thing for sure about the industry today, and
22 that is that the way that we use existing plants, the number and type of
plants that are being built and the way they're being used, the range of
services provided customers, and I mean both power supply as well as
what has been come to be known as demand-side management programs, all
these things will be different, perhaps radically different tomorrow or

1 in the future than today.

2 Already, you have some 18 states that have endorsed a
3 competitive power marketplace, setting in motion a process that will
4 allow just about half of all Americans a choice in their provider of
5 power or energy services. These trends have accelerated over the past
6 year, and they will continue.

7 As a result of these changes, since last year, you've seen
8 literally tens of thousands of megawatts of existing power plants put on
9 the auction block and sold. The new buyers of these plants are going to
10 rework these plants, they're going to rebuild, they're going to replace
11 them.

12 Other developers sensing the changed industry and
13 marketplace, and the possibility for new opportunities, have proposed
14 additional tens of thousands of megawatts of new clean powerplants,
15 largely natural gas, but many coal plants as well, that are being
16 developed.

17 Now, in some instances, these new facilities are being
18 planned to meet the expectation of increased demand, but in many cases,
19 these new plants are being built to win in the existing marketplace,
20 that is to out-perform the out-of-date and inefficient plants.

21 Now, we've delivered this message before. For EPA we
22 believe there are two clear lessons. The first one is that market
change demands, new ideas, and new approaches, and this is important in
the way you design the regulatory program for this NOx program.

 Just as the 1990 SO₂ program would be different if you
designed it for today's market, we have to be careful not to act as if

1 we have all the answers. We need to recognize and build into the NOx
2 control program the flexibility to evolve with new circumstances and
3 information.

4 Now, EPSA strongly endorses development of a solid regional
5 framework for the market-based reduction of NOx emissions, and EPA's
6 development of a complete model for that framework, including, by the
7 way, the all important issue of the allocation of emissions rights. We
8 believe that minimizing the disparity among state programs and the
9 environmental regulatory requirements applicable to participants is
10 critical to achieving an effective, efficient, and least-cost air
11 quality program in a cap-and-trade market.

12 Now, EPA has endorsed a five-year control period, which is
13 certainly better than something that is a lot longer, but frankly, you
14 could probably get away with something even shorter.

15 We don't believe there will be great or unpredictable
16 changes in either the supply or demand of NOx allowances, we wouldn't
17 expect a lot of volatility, and frankly, there are a lot of other
18 competitive industries that deal with this type of risk effectively on a
19 day-to-day basis, and we think that the competitive electric power
20 industry can do likewise.

21 The second lesson that we think is important to emphasize
22 here for the design of this program is that innovation and competition,
which we think have the prospects of continued improvement in air
quality, depend on new entrants. Now, this needs to be recognized, we
think, explicitly within the model rule.

EPSA supports EPA's efforts to minimize these barriers to

1 new entrants and the proposed two percent set-aside of allowances for
2 new units. We are a little concerned that we have a five-year control
3 program, and you talk about the type of change you see, that this may be
4 small relative to the demand for these allocations, but we think it's an
5 important nod, I think, to new entrants.

6 But I want to say one thing, I want to emphasize this. We
7 very much appreciate your work, and we appreciate the program, we
8 support the concept, but we want to underscore that this is not our
9 preferred solution.

10 Set-asides, depending on how they get implemented, can work
11 well or badly, and one of the big problems with them, it looks like
12 these new entrants are getting a special deal. This is not our goal.
13 Our goal is parity, to get the same rights, under the same terms as
14 existing market participants. Any set-aside as a second best solution,
15 by definition, is anything but parity.

16 We're going to be submitting written comments and we look
17 forward to working with you-all, the EPA, and other staff as this model
18 rule moves forward.

19 MR. WILSON: Thank you. Mr. Flannery.

20 MR. FLANNERY: Thank you, Mr. Wilson, I'm Dave Flannery, I
21 represent the Midwest Ozone Group. We're here today to continue our
22 observance of EPA's ill-conceived regulatory initiative by addressing
the issuance of the supplemental notice to the proposed NOx SIP Call.
Frankly, it takes nothing more than a review of the SIP Call itself to
recognize the significant legal and technical errors that are inherent
in it.

1 The only appropriate remedy we believe that is left for EPA
2 at this point is to follow OTAG's recommendations to do the type of
3 refined analytical work that would allow us all to determine the nature
4 and extent of the controls that need to be imposed on the sources that
5 are actually causing the violations of the ambient air quality standards
6 that threaten the American people and their health.

7 Our detailed comments on the supplemental notice will
8 contain new modeling results that we believe will conclusively
9 demonstrate that the SIP Call is simply regulating the wrong sources.

10 This data shows, one, that full implementation of the
11 proposed NOx SIP Call will not achieve even the one-hour standard in
12 much of the serious and severe non-attainment areas of the Northeast;
13 two, that the vast majority of the air quality benefits in the Northeast
14 from the proposed NOx SIP Call are related to the imposition of the
15 proposal on sources that are located in the inner zone of the Northeast
16 OTR; three, that imposition of additional controls on low-level sources
17 of NOx and VOC within the inner zone of the OTR will dramatically
18 improve air quality in that region; and four, that imposition of the SIP
19 Call's .15 control strategy outside the Northeast OTR will not
20 significantly improve air quality in the Northeast beyond that that
21 would be achievable by a more modest level of reduction, for example, 55
22 percent, or .35, control strategy.

 Moreover, we've discovered that the recently filed
attainment plans of the Northeast states are wholly inadequate, even
though the statutory deadline for making those submittals was November
of 1994. A review of the recent submittals of Connecticut, Maine,

1 Massachusetts, New Hampshire, and New York confirm that even though
2 those states acknowledge continuing air quality problems will exist even
3 if we assume full implementation of the NOx SIP Call, that no new local
4 controls are being proposed for implementation. We haven't heard at all
5 from Rhode Island, and don't know when Rhode Island might file its plan.

6 In short, as we review those attainment plans, we see no
7 indication that any of these six states intend to remove even the first
8 ton of NOx from their own air that is not mandated either by the
9 mandatory requirements of the Clean Air Act or proposed by your NOx SIP
10 Call, and yet it is principally this group of states that has somehow
11 convinced EPA not only to condone their inaction in the face of ongoing
12 and continuing air quality problems in the Northeast, but also to
13 encourage you to pursue wholesale emission reductions on sources that
14 are located in states that have already satisfied their legal
15 obligations under the Clean Air Act.

16 We find this result to be intolerable, we call on EPA to
17 immediately initiate a federal implementation plan, and to take
18 appropriate sanctions with respect to the States of Connecticut, Maine,
19 Massachusetts, New Hampshire, New York, and Rhode Island. It has been
20 well in excess of two years since these states became subject to the
21 duty to file attainment plans, it's now imperative that action be taken
22 to address their failure to discharge that duty.

With respect to the trading program proposed in the
supplemental notice, we recognize that EPA has continued to think that a
ton of NOx is a ton of NOx no matter where it originates.

We're deeply concerned about that approach, and strongly

1 favor the development of state budgets on the basis of variable emission
2 rates that are linked to air quality impacts. Should, however, EPA
3 continue its insistence that state budgets be based on a
4 one-size-fits-all approach, we urge that the trading program be open and
5 free.

6 No trading program can be expected to work, however, if the
7 budgets involved are based on the .15 pound per million BTU emission
8 rate, there is simply too little opportunity to trade emission credits
9 among units when the overall emission rate is that restrictive.

10 For these reasons, and many others that will be set forth in
11 our detailed written comments, we urge that EPA refrain from further
12 development of its proposed NOX SIP Call, as set forth in either the
13 proposed notice or supplemental notice, in favor of implementing the
14 Clean Air Act in a manner that will focus not on regional politics and
15 leveling economic playing fields, but rather on the development of
16 appropriate science to determine the nature and extent of emission
17 reductions that will assure attainment of the ozone ambient air quality
18 standard, and protection of the health of all American people.

19 MR. WILSON: Thank you. Mr. Wyman, a couple of questions.
20 First of all, you make the point that at a .15 level you don't think
21 there's much point, I guess, to a trading program, since you don't think
22 there are many tradeable allowances, and that's not the analysis we
have. Do you have a separate analysis you're submitting?

MR. WYMAN: Actually, I was hoping you'd ask me that,
because with such a short time during the regular period, it's hard to
get into the details.

1 I know that your analysis concluded that based on other
2 programs there would be lots of extra reductions to trade, and I think
3 what you need to focus on in distinguishing those other examples from
4 this one is the cost curve and where you are on the cost curve with the
5 .15, because whether or not companies will go beyond .15 for their own
6 systems will depend very much on the marginal cost of the next
7 increments of reduction --

8 MR. WILSON: True.

9 MR. WYMAN: -- and as your own staff has acknowledged in
10 discussions with us, the costs go up very quickly, from below \$2,000 per
11 ton, to a range, in your estimates, of about \$5,000 per ton, and in our
12 estimates of about \$10,000 per ton for those incremental additional
13 tons.

14 Our view is that because of that fact, because these costs,
15 incremental marginal costs are so much higher than what you're using as
16 your sort of target number, which is below \$2,000 per ton, that it is
17 highly unlikely that companies, for their own systems, will go beyond
18 the .15 number.

19 They may for individual units, where that makes sense, in
20 terms of sort of the steps they take for control, but it is highly
21 unlikely they will do it on a system-wide basis, once you get to .15,
22 because of the marginal cost numbers, and, therefore, the likelihood
that you'd have a meaningful trading program between companies is very
low.

 MR. WILSON: Well, again, it would be useful to have your
analysis.

1 MR. WYMAN: Sure.

2 MR. WILSON: I think our analysis, looking just at the
3 utility sector, suggested that more controls would be put on some units
4 and less on others, there would be a trading base.

5 MR. WYMAN: Well, I think if you've listened to my comments,
6 I think I agreed with that to an extent. I think that, in fact,
7 individual units may be controlled in some cases below .15, but on a
8 system-wide basis, for an individual company, they are unlikely to go
9 beyond the system-wide average of .15, because of the high marginal
10 costs of doing so.

11 MR. WILSON: So you're suggesting there's a basis for
12 trading within a company, but not outside of a company.

13 MR. WYMAN: I think the average in benefits will be
14 significant, I think the trading benefits will be very slim, maybe
15 non-existent, at that level.

16 PARTICIPANT: Could you average without trading?

17 MR. WYMAN: Well, averaging is a subset of trading, there is
18 no question --

19 PARTICIPANT: Essentially averaging -- you're just defining
20 the region of the trade --

21 MR. WILSON: Right.

22 PARTICIPANT: -- within a company.

MR. WYMAN: I agree with you. I've always felt this way,
the trading programs have many different elements in them, but averaging
-- I think the greatest averaging -- the greatest benefits will come
from averaging. Others have said, I think it was the gentleman from

1 Southern Company, that we need to look at the alternatives of rate-based
2 programs.

3 A system-wide average for companies, based on emission
4 rates, would not have the problems of output-based allocations, the
5 robbing Peter to pay Paul problems that you've heard about, and it would
6 produce most of the benefits, if you stayed at this level. If you go to
7 levels that we're suggesting, which are differential targets, the
8 marginal costs there are much lower, and, therefore, the ability to have
9 a robust trading that is intercompany trading market are much higher.

10 MR. SEITZ: Just a follow-on, and you can start with the
11 analysis, I know we've heard a lot about the incremental costs, and the
12 next cost being not acceptable, to go that step, but I've seen -- we've
13 seen since the start of this analysis three years ago that those costs
14 are only going down, both current costs and -- so could you project your
15 future costs, too? I don't need to see it today, but --

16 MR. WYMAN: Sure.

17 MR. WILSON: -- in your analysis could you take a look at
18 that?

19 MR. WYMAN: Well, I think there are differences, and I will
20 be happy to submit information. There's the difference between cost
21 improvements for specific technologies and costs for the next increment
22 of control.

We would hope and expect that there would be improvements in
the former, but doubt that there will be serious improvements at the
latter, given the extent to which your program would go.

MR. SEITZ: Just two questions, I guess. Confusion. You

1 seem to indicate that the SIP Call was an attainment SIP Call in your
2 testimony, is that what you believe it was?

3 MR. FLANNERY: No. That's my criticism of it.

4 MR. SEITZ: You believe it should be an attainment SIP Call.

5 MR. FLANNERY: Well, indeed, I believe there's a serious
6 question about your authority to pursue that, and we spoke at length
7 about it in our comments, if it's anything other than -- to the extent
8 that the SIP Call is not seeking to achieve attainment, one, it's not
9 seeking to protect public health.

10 We believe that there is an overwhelming public policy issue
11 that we have to get at through the SIP Call or some other mechanism.
12 Clearly, whatever processes EPA is now following with the Northeast
13 states, for example, to achieve that, aren't doing it.

14 MR. SEITZ: Well, I understand the Northeast, but just in
15 the question of the broad brush of the SIP Call, you believe that the
16 SIP Call should be seeking to produce attainment.

17 MR. FLANNERY: Well, we're in attainment for much of the
18 country that I represent. I'm not sure why we're engaged in the SIP
19 Call right now, if it's not to deal with the Northeast and the serious
20 and severe non-attainment areas.

21 We're 100 percent attainment in West Virginia, the gentleman
22 told you about the Carolinas, and you probably can name the rest of the
37 states better than I can as to who is attainment and who isn't. But
for the serious and severe non-attainment of the Northeast, I don't know
why you need a SIP Call to start with.

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

1 The testimony seems to produce that you talk about attainment, but we're
2 talking about a transport reduction SIP Call here. I think we're
3 talking about the same --

4 MR. FLANNERY: Yes. I think we are communicating on that.
5 We understand that's that you are trying to do, and our concern is that
6 it doesn't do it in a way that brings all the players to the table that
7 need to be brought to the table, if you're going to deal with the issue
8 that brings you here, which is how are we going to achieve attainment
9 with the standards.

10 MR. SEITZ: That goes to the second question. You seem to
11 indicate that the Northeastern states, and maybe just for the record, if
12 you could submit this, it's my understanding, at least in the Northeast
13 states, with their NOx MOUs, something like nine to ten of those states
14 have adopted and put in place NOx reductions that go beyond what we've
15 done to this point in time, federally.

16 At least, that's my understanding of it. You seem to
17 indicate that they haven't done that in your testimony, so if you could
18 clarify that --

19 MR. FLANNERY: My understanding is that phase three of the
20 NOx MOU is a level that is not what you're proposing in the SIP Call.
21 The SIP Call takes them beyond.

22 MR. SEITZ: But your testimony was that at this point in
time they hadn't done anything more than we made them to do, and I'm
just trying to clarify --

MR. FLANNERY: No, my testimony was that, based on the
demonstrations that they just filed, they assume full implementation of

1 the NOx SIP Call and full implementation of the mandatory requirements
2 under the Clean Air Act, they still show non-attainment, and as I read
3 those proposals, they are not committing to do anything other than what
4 you've proposed or what is mandated under the Clean Air Act.

5 MR. SEITZ: On their submissions, that is correct.

6 MR. FLANNERY: On the attainment demonstrations they just
7 filed, yes.

8 MR. STOLPMAN: Mr. Peters, you stressed in the trading
9 program flexibility, parity, removal of barriers for a new entrance. I
10 thought I heard you say you supported the two percent set-aside, and
11 then I thought I heard you kind of say you didn't really support the
12 set-aside.

13 I thought I heard you say the five-year allocation period
14 was certainly better than infinite, or better than a longer one, but I
15 didn't quite hear you close on -- is there an alternative for us here
16 that's better than what we have?

17 MR. PETERS: Well, I'm glad you asked the question, because
18 what we're engaged in here is trying to get the good, and often the
19 perfect is the enemy of the good, and you have to make the decisions
20 that you need to make in order to get a policy that works in a timely
21 fashion, and that can be implemented.

22 Now, we recognize that, and we recognize that the policy
that we might design for our specific members might be different, and
that's really the point I'm making here.

On the five-year program, I mean if you compare that with
some kind of eternal allocation, that's far, far preferable, both

1 because I think it's fairer, and also it gives you an ability to go back
2 and take into account new information, and you adjust the program
3 appropriately.

4 My point was, is that I think if you look at other markets
5 and other industries, that other industries handle the kind of risks
6 that would be associated with buying and selling emission credits, that
7 same kind of basically commodity risk, and continue to function in a
8 competitive marketplace.

9 All I'm saying is that five is probably fine, but you
10 probably, if you really wanted a more responsive program, you could get
11 away with less and not really endanger the industry as probably some
12 people would say.

13 The same is true for the set-aside. If you set a five-year
14 program, which basically means that you have to be in at the beginning
15 in order to participate fully during those five years, then you're going
16 to need at least potentially some kind of special program for people
17 that just don't meet the criteria of the five-year window.

18 We would prefer that new entrants have essentially the same
19 -- participate fully, the same rights, terms, conditions as the existing
20 market participants. I mean they all produce -- in the power business
21 they'd all be producing kilowatts, so we think that that sort of is a
22 commodity and freely traded, and they should all have the same rights.

If you're going to have the kind of formulation that you
have posited, which is a five-year program, then a set-aside, a modest
set-aside we think probably makes some sense to deal with some of the
transitional risks that may exist.

1 But I just wanted to emphasize that we're not here to say
2 that, gee, we think the best thing for new entrants is a special
3 program. What we want is to be able to look like everybody else,
4 because basically we're selling a product that looks in many respects
5 what everybody else sells.

6 MR. STOLPMAN: Thank you. That helps.

7 MR. WILSON: Thank you all very much. I'm going to take a
8 little break here, but just a comment for those of you who may have come
9 in later, we're going to try to do what we can to kind of plowing ahead
10 and finish ahead of schedule, by sort of working through lunch.

11 If that works for people, if there are people here who were
12 scheduled -- we were scheduled to take an hour lunch break from 11:30 to
13 12:30, I know we've gotten in touch with some of the people who were
14 scheduled after 12:30, if there are others who we haven't -- if you
15 could check in with the registration desk, as I said, we'll try, if
16 people are here, just to plow through and then we should be able to
17 finish by about 1:00 o'clock, and people can take a lunch break, head
18 home, whatever they want to do.

19 If that's not going to work for somebody, obviously, we'll
20 be here to make sure that if somebody is traveling and is not here yet,
21 we'll hear their testimony before we break, but for logistical reasons,
22 if you're on after 12:30, and nobody has talked to you yet, if you could
check in with registration and let us know if it's okay to go ahead
after the break. So we'll take a ten-minute break and be right back.
Thanks.

(Recess.)

1 MR. WILSON: We are back on the record.

2 The next group, the next panel is Kathy Beckett, Stephen
3 Roberts, and Mr. Dharmarajan.

4 MS. BECKETT: Good morning, my name is Kathy Beckett, I'm
5 from the law firm of Jackson and Kelly, and I'm offering the following
6 statement for Jim See, who is the Chairman of the tri-state industrial
7 network, TRINET.

8 TRINET is a business group representing the metals,
9 petroleum, natural gas, and utility industries located in Ashland,
10 Kentucky, Ironton, Ohio, and Huntington, West Virginia. Our group was
11 originally formed to develop an attainment SIP to address the moderate
12 non-attainment ozone that existed in that region.

13 Accordingly, TRINET is a great proponent of the development
14 of local control programs and careful monitoring of ambient air quality.
15 EPA has announced numerous changes in the emissions budgets analyses for
16 the proposed NOx SIP Call.

17 TRINET cannot stress enough the importance of the
18 development of an accurate emission inventory, in order for the
19 communities of Ashland, Ironton, and Huntington to design an effective
20 ozone management strategy. We work very hard at perfecting the
21 emissions data first.

22 EPA is urged to stabilize the emissions inventory and budget
before embarking upon the promulgation of a NOx control strategy that
will have significant impacts on the economies of all 23 affected
jurisdictions. It is only fair and appropriate to insist that EPA
develop a final and accurate emissions budget now, rather than in a

1 piecemeal fashion.

2 TRINET is supportive of the concept of emissions trading, we
3 continue to urge EPA to develop state NOx budgets, based upon more
4 refined modeling, with the goal of attainment of the ozone standard.

5 EPA must create a NOx budget trading program, based on
6 attainment. Such a program necessarily would need to recognize that not
7 all NOx emissions have the same impact on non-attainment areas. As EPA
8 has acknowledged, sources that are closer to areas violating the air
9 quality standards have larger effects on air quality than sources that
10 are far away.

11 TRINET is working with other industry and state groups in
12 developing additional data to assist EPA in reassessing its current NOx
13 SIP Call proposals. If, however, in spite of the technical and legal
14 obstacles that have been identified for EPA's consideration, the
15 proposed NOx SIP Call is finalized with a uniform emission control
16 strategy, TRINET would concede the point that open and free trading is
17 the only reasonable manner in which to establish a trading program.

18 EPA also raises the question concerning the participation in
19 the trading program of various source categories. Mobile sources must
20 be included. It is undisputed that mobile sources have a significant
21 impact on the creation of ozone on a local level, and, therefore, must
22 be included in the overall ozone attainment strategy.

 In non-attainment areas, mobile sources need to be regulated
as a significant contributor to the ozone problem, and afforded the
benefits and pressures of a trading program.

 The allocation of NOx allowances presents a question of the

1 need to provide the regulated community appropriate notice with regard
2 to specific source allocations. TRINET supports the option where a
3 state would submit its proposed allocation of allowances once every five
4 years, or even longer. This method will provide stability.

5 The notice, however, does not address the role the public
6 and the regulated community will be afforded in the creation in the
7 five-year allowance allocations. TRINET urges EPA to provide an
8 appropriate discussion of the role of the Administrative Procedures Act
9 and review of agency actions will have upon the allocations process, as
10 well as the trading program as a whole.

11 TRINET also urges EPA to provide for the accumulation of
12 early reduction credits. It is important to encourage the reduction of
13 emissions as early as possible. The problem EPA identifies in the
14 notice concerning the flooding of the state allocation pool, with early
15 credits, magnifies the greater problem with a proposal that is not based
16 upon attainment of the ozone ambient air quality standard.

17 If designed correctly, a trading program would weigh
18 credits, and allow the exchange of such credits only within those areas
19 where air quality would not be adversely impacted.

20 Finally, the notice also includes SIP Call provability
21 criteria. TRINET takes extreme umbrage at EPA's emphasis upon the
22 comments phenomenon, which it describes as a circumstance where states
have less of an interest in controlling pollution that affects the
health of non-residents compared to its interest in controlling
pollution that has interstate effects.

EPA's emphasis upon the comments phenomenon begs the first

1 unanswerd question of why the agency is willing to turn a blind eye to
2 the Northeast states, absolute refusal to address the health-based
3 standard, because of its concerns over leveling the economic playing
4 field.

5 EPA is focusing upon whether states will consider the
6 impacts of emissions on other downwind states, as opposed to assessing
7 the immediate need to address the adverse health effects that are
8 occurring in the non-attainment areas, as we speak, and as Dave Wooley
9 pointed out earlier in his paper today.

10 EPA fiddles with this mitigation strategy, while the
11 remainder of us are trying to develop an answer to protecting public
12 health.

13 The members of TRINET are prepared to work with EPA to
14 reform the SIP Call proposal to address these issues. TRINET will be
15 filing more detailed comments.

16 MR. WILSON: Good.

17 MS. BECKETT: Thank you.

18 MR. WILSON: Perfect. Thanks. MR. ROBERTS.

19 MR. ROBERTS: My name is Steve Roberts. Thank you, Mr.
20 Wilson. I'm the President of the West Virginia Chamber of Commerce, and
21 I'm here to comment on EPA's supplemental notice to the proposed NOx SIP
22 Call. The West Virginia Chamber of Commerce has as its mission
statement the goal of being an action-taking business organization.

We are our state's largest trade organization of businesses,
and our members principally are small businesses. Small businesses
comprise 97 percent of all West Virginia businesses. Our members seek

1 not only to improve the state's business climate, but also to improve
2 West Virginia's quality of life.

3 The fragile nature of the small business sector creates a
4 formidable challenge in weathering financial difficulties. The Chamber
5 has filed extensive comments, and has engaged in litigation with the EPA
6 concerning EPA's lack of compliance with the Small Business Regulatory
7 Enforcement Fairness Act, SBREFA, relative to this proposed rulemaking.

8 SBREFA was intended to make federal agencies more responsive
9 to the unique characteristics and capabilities of small businesses.
10 Nowhere is this mandated accountability to small businesses more
11 important than in the development stage of the regulatory process.

12 The outreach advisory panel's initial and final regulatory
13 flexibility analysis that SBREFA requires EPA to perform are more than
14 just methods of providing information about the impact of proposed
15 regulations on small business. These required analyses are to be
16 conducted to ensure that the agency fully considers, and as far as
17 possible, adopts alternatives for small businesses that would minimize
18 undue burdens of compliance, yet achieve the goals of the regulatory
19 program.

20 The EPA disregarded the protection for small businesses
21 afforded by SBREFA by certifying that SBREFA does not apply to the
22 proposed SIP Call for transported ozone. Under the proposed SIP Call,
West Virginia is subject to greater restrictions than any of the other
22 jurisdictions affected by EPA's proposal.

Under EPA's revised state budget included in this proposed
supplemental notice, West Virginia faces NOx reductions of 48 percent,

1 with certain categories of sources likely to receive reductions in
2 excess of 85 percent. This marks a four percent increase from the
3 initial NOx SIP Call rulemaking. It also marks a doubling from 24
4 percent to 50 percent in the expected NOx reductions from the industrial
5 point source sector, which contains many more small entities.

6 EPA has announced that it is proposing to keep small
7 sources, such as emitting units, in the statewide budgets at baseline
8 levels, without additional emission reductions.

9 The Chamber membership remains uncertain as to the impact of
10 this proposal on small business, since it is far from the case that all
11 small businesses meet the arbitrate threshold EPA has established for
12 small sources.

13 As an explanation for the changed state NOx budgets, EPA has
14 announced in the supplemental notice that it has refined its emissions
15 inventory, and accordingly has identified errors. The Chamber urges
16 caution by EPA as it tosses around figures for statewide budgets that
17 will become enforceable law.

18 The considerable financial burdens that EPA will be asking
19 states to accept must be based upon a well-developed scientific data
20 base. The membership of the Chamber has limited resources, and looks to
21 the EPA for assurances that the regulatory programs being developed have
22 a sound basis and a lawful goal.

This heavy burden EPA is proposing to impose on West Virginia and the other affected states is exactly the type of agency activity for which SBREFA is necessary. EPA's NOx budget trading program is proposed to affect large utility and non-utility sources.

1 The Chamber has reviewed this proposal with interest, and is
2 supportive of creative market-based options for emissions reduction
3 management; however, small businesses operate within a very limited
4 financial portfolio, and EPA has not addressed the likelihood of a small
5 business's ability to participate in a market-based trading program.
6 The Chamber urges EPA to address this issue, as well as all other issues
7 related to the impact of these rulemakings on small businesses.

8 It is the West Virginia's Chamber's concern over EPA's
9 determination that SBREFA does not apply at all to the proposed SIP Call
10 that has led us to join with other business organizations in raising
11 these issues in litigating with EPA.

12 Small business must have a meaningful opportunity to address
13 EPA's views of the SIP Call's impact on their particular position in the
14 economy. It is unseemly for EPA to allow that result only in response
15 to a court order.

16 The Chamber membership urges EPA to revisit the role of
17 small businesses in the SIP Call. Small businesses in West Virginia are
18 willing to engage in the appropriate development of a control strategy
19 that will assure that our state is maintaining its commitment to the
20 Clean Air Act, and specifically to the National Ambient Air Quality
21 Standards.

22 These commitments, however, must be sensitive to the special
 concerns of small businesses, and must be undertaken as part of an
 overall solution to our nation's air quality goals.

 I have additional written comments, and I look forward to
 submitting them. Thank you.

1 MR. WILSON: Thank you. We'll enter them all in the record.
2 Thanks very much.

3 MR. DHARMARAJAN: Good morning.

4 MR. WILSON: Good morning.

5 MR. DHARMARAJAN: My name is Dharamarajan, and I represent
6 Central and Southwest Corporation, a Dallas-based electric utility
7 holding company.

8 My comments will be limited to the four Southwest states of
9 Arkansas, Oklahoma, Louisiana, and Texas, which are listed under the
10 OTAG coarse grid classification, where my company provides electric
11 service to an estimated population of 4.2 million people, or
12 approximately 152,000 square miles.

13 Our current capabilities of 14,377 megawatts include a broad
14 mix of fuels. Central and Southwest Corporation filed written comments
15 on EPA's basic SIP Call proposal on March 6, 1998, where we endorsed and
16 applauded EPA's recognition of OTAG's recommendations to exclude coarse
17 grid states from control measures.

18 However, we also expressed concern about EPA's suggestion in
19 the SIP proposal that it may include some or all of the 15 coarse grid
20 states in the final SIP Call rule, if it appeared that these states were
21 significant contributors to non-attainment and fine grid areas.

22 EPA was to base such decisions on comments received, as well
as any additional modeling and technical analysis, leading up to the
issuance of the final SIP Call rule. The SNPR does not allay our
concerns in this regard.

Central and Southwest continues to believe very strongly

1 that EPA should not revisit the Southwest states NOx reduction needs in
2 the context of this rulemaking. The EPA should stay its course, and
3 follow recommendations of the OTAG in the final SIP rule.

4 For the record, if additional comments, technical analysis,
5 or modeling results or introduced into the docket between the close of
6 the comment period on this SNPR and the final SIP rule assurance, and
7 two, if substantial changes result to the SIP rule pertaining to coarse
8 grid states, then the EPA would be obligated to re-propose portions of
9 the rule affecting coarse grid states, and afford sufficient time for
10 review and comment on claims made by the commenters.

11 This is procedurally important considering the enormous
12 amount of time, resources, and cost expended by the Southwest coarse
13 grid states and industries, who independently demonstrate to the OTAG
14 body why the Southwest coarse grid states should not be included in any
15 OTAG-recommended control measures. Similar analysis and conclusions
16 were independently reached and adopted by OTAG in its recommendations to
17 the EPA.

18 I would also like to restate for the record the following.
19 One, NOx emission rates from Southwest utilities are still among the
20 lowest in the U.S. and continue to trend downwards, due to voluntary
21 measures. Two, we continue to have a greenbelt of attainment areas
22 which separate the Southwest from other regions.

Three, Oklahoma and Arkansas have no non-attainment areas
under the soon-to-be-issued EPA one-hour standard revocation notice.
Four, our four Southwest agencies are actively addressing issues
relative to their local problems, and are still continuing the regional

1 cooperative efforts with industry.

2 As for other contextual issues pertaining to this SNPR, we
3 offer the following. One, we are still concerned about the lack of
4 definition for a significant contributor to ozone non-attainment in the
5 downwind state.

6 EPA has yet to attach any threshold levels towards
7 significant contributed definition, which leaves the question begging as
8 to what differentiates a mere contributor to non-attainment from a
9 significant contributor to non-attainment in the downwind state.

10 Two, request EPA's equal assumptions in proposing broad
11 geographic trades. Buying NOx credits from far reaches to cover actual
12 emissions in the non-attainment areas may make economic sense.

13 Without a scientific basis or demonstration of air quality
14 benefits, we wonder if such a trading program is proposed as an exercise
15 in futility, with attendant cost implications to nurture it, but with no
16 substantive environmental benefits.

17 I would like to conclude by urging the EPA to retain the
18 recommendations of the OTAG, and not including the fourth Southwest
19 states in the final rulemaking. Central and Southwest will be filing
20 written comments. I thank you for your time in allowing us to share our
21 comments.

22 MR. WILSON: Thank you.

MR. STOLPMAN: I have a question, Kathy, in talking about
early banking, I think you kind of implied that if we designed the
trading program correctly, we wouldn't have to worry about the
accumulation of a fairly significant bank, and then a drawdown in a

1 certain year that might then have more emissions than our plan during
2 whatever the budget period is.

3 What are the elements of designing it correctly that
4 eliminate this problem of a --

5 MS. BECKETT: Of a surge --

6 MR. STOLPMAN: -- total load or a surge in the market?

7 MS. BECKETT: Well, I don't know that I have a specific
8 recommendation to offer right now, but the basic premise that we are
9 interested in is that if we were to allow some early emission credits,
10 you understand, there is a hesitation at this point of engaging in that
11 practice, simply because we keep lowering the threshold, and companies
12 are very concerned that they cannot get -- they will lower the
13 threshold, and otherwise get no credit for having done so at this point.

14 I think that if you were to provide up front an emission
15 credit option, you may well encourage some quick responses to voluntary
16 reductions or initial reductions that would be early on. I don't know
17 that I have the full solution for your question, but it deserves some
18 consideration.

19 MR. STOLPMAN: Thank you.

20 MR. WILSON: This isn't a question, it's sort of a comment.
21 A couple of people have raised the issue about what we're doing with
22 regard to state plan requirements from some of the Northeastern states.

As most of you know, as part of the OTAG process, we delayed
the requirement for attainment SIP from areas who were pending the
working through the OTAG process, so we were able to tell them what to
assume from the standpoint of emission reductions from other states.

1 Subsequent to OTAG and subsequent to our proposal, we did
2 establish an April deadline for submittal of those SIPS, April of 1998,
3 and told them to assume that our proposal was what would -- they should
4 be assuming reductions equivalent to our proposal.

5 We have a number of attainment SIPS in from areas, we have
6 some that aren't in yet, and we're working with those states. We intend
7 to proceed under the Clean Air Act, and if we don't get submissions,
8 we'll proceed to make the appropriate findings and start the appropriate
9 sanctioning clock.

10 While we are insistent on keeping on schedule and getting
11 the OTAG SIP Call finished, we are also insisting that those areas
12 continue to take whatever additional local reductions are needed to
13 achieve attainment.

14 So we are going to do our best to be balanced, and just sort
15 of a comment, in general, because it's been raised a couple of times,
16 and I know there is a serious fairness question raised by everybody on
17 this one. Thank you all for coming, we appreciate it.

18 The next three, Rachel Goddard, David Cesareo, and Louis
19 Pocalujka. We appreciate people's understanding. We're sort of
20 catching people next in order, based on who is here, so I know we're
21 kind of -- hopefully, we're not catching people too far offguard.
22 Thanks for the understanding. Ms. Goddard.

MS. GODDARD: Good morning. My name is Rachel Goddard, and
I'm speaking to you on behalf of Mr. Pat DalPorto, of the American
Electric Power System.

As a preface to our comments on the proposed rulemaking, we

1 note that EPA has acknowledged numerous errors in the proposed emission
2 budget analysis set forth in the proposed NOx SIP Call published in the
3 November 7, 1997, Federal Register. This rulemaking process has been
4 characterized by haste, incomplete and inaccurate data, and
5 unavailability of critical analytical tools, including computer modules
6 and model inputs to confirm the need for certain actions fundamental to
7 this rulemaking process.

8 AEP is concerned that this SNPR, as well as the underlying
9 NOx SIP Call, reflect an effort on the part of the agency to develop a
10 broad region-wide one-size-fits-all rule, that is focused only on
11 reducing tons of NOx, and not on achieving attainment with the ozone
12 ambient air quality standard.

13 The Clean Air Act clearly vests in each state the
14 fundamental responsibility for developing specific emission control
15 programs to achieve and maintain national ambient air quality standards.
16 The agency's approach in this rulemaking disregards that fact entirely,
17 and we believe is fatally flawed, as a result.

18 The program the agency has proposed may well move some areas
19 farther from the goal of ozone attainment. We urge EPA to refocus their
20 efforts and support all the states, those in the Midwest as well as in
21 the Northeast, as they strive toward attainment.

22 Furthermore, the cost estimates included in the proposed
rulemaking are grossly understated and require substantial additional
review and modification. A study now being completed by Zinder and
Associates significantly upgrades the quality of control cost estimates
and provides a much more accurate view of the actual costs of

1 incremental compliance to obtain marginal air quality benefits.

2 The agency has persisted in its effort to apply a uniform
3 control approach to a broad geographic region, when, in fact,
4 subregional analysis and implementation of selective control techniques
5 will provide much greater ambient benefit at a substantially reduced
6 overall cost.

7 Frankly, without a program that allows states to control
8 source sectors that are responsible for ozone non-attainment, EPA will
9 be requiring the expenditure of hundreds of millions, if not billions,
10 of dollars for controls that do not address Northeast non-attainment,
11 but may increase ozone concentrations in some other areas.

12 Finally, with respect to the proposed NOx trading program
13 which EPA has included in the SNPR, AEP believes that EPA must not
14 implement a program that sacrifices ozone ambient air quality on the
15 altar of NOx trading.

16 Although AEP favors the concept of trading to reduce costs,
17 a program employed to disguise the actual costs of control to meet a
18 technically unsupported uniform NOx emission reduction strategy that
19 fails to recognize specific subregional control needs is without
20 justification.

21 While pollutant-specific trading as a concept for
22 cost-effective pollution control has broad support, its introduction in
this rulemaking serves only to cloud the fundamental issue of whether
the extent of reductions called for in the SNPR and the proposed NOx SIP
Call can be justified technologically, economically, or illegally. We
submit that the answer is no. We support the statements offered by the

1 Utility Air Regulatory Group and the Midwest Ozone Group.

2 We appreciate the opportunity to present this statement, and
3 will be filing written comments shortly. Mr. DalPort has asked, if you
4 have any questions to please contact him at AEP. Thank you.

5 MR. WILSON: Thank you.

6 MR. CESAREO: Good morning. My name is David Cesareo, and
7 I'm the PECO Energy Company Director of Environmental Affairs. Before I
8 get into our comments on the supplemental notice, I would like to
9 provide a few words regarding our company. PECO Energy is an operating
10 utility providing electric and natural gas service to the public in
11 Southeastern Pennsylvania.

12 During the 1997 ozone season, a generation owned by our
13 company produced approximately 22 percent of the Pennsylvania electric
14 generation.

15 Our traditional service area is approximately 1,900 square
16 miles, with a population of about 3.6 million people. Our electric
17 distribution includes Bucks, Chester, Montgomery, Delaware, and
18 Philadelphia Counties. These counties are classified as severe
19 non-attainment under the one-hour standard.

20 As we discussed in our early comments on EPA's November 7th
21 proposed rule, PECO Energy supports EPA in taking action under Section
22 110 of the Clean Air Act, to address the issue of ozone transport.

It is clear that a significant reduction in transported
ozone and its precursors is needed to support attainment and maintenance
of the one-hour federal ozone standard in many areas of the Eastern
United States. A reduction in transport ozone will also support

1 attainment of the new eight-hour standard.

2 PECO Energy believes that EPA has appropriately analyzed the
3 impact of ozone transport and its weight of evidence approach, which
4 considers of both predictive modeling and actual data from ground-level
5 and airborne monitoring.

6 In terms of modeling support, EPA analysis is appropriate,
7 based upon OTAG modeling. It is appropriate, based upon specific
8 modeling of the proposed SIP Call conducted by a number of Northeastern
9 utilities during early 1998, and submitted to a docket this past March.

10 To demonstrate attainment of a one-hour standard in
11 Southeastern Pennsylvania, we need three years of clean data leading up
12 to the area's 2005 attainment date. Because of this, and because of
13 other non-attainment areas in the Eastern United States facing similar
14 deadlines, and/or the need to maintain a standard, we believe that the
15 NOx control program for electric generators proposed by the EPA in its
16 draft SIP Call is appropriate.

17 We support implementation of the proposed 560,000 ton cap,
18 calculated on a uniform basis throughout the 22 eastern states, at a
19 date no later than May 1, 2003. Without the SIP Call reductions on this
20 time schedule, the benefit of local control programs will be
21 significantly offset by continued regional transport.

22 To implement the proposed cap in the most cost-effective
manner, we support EPA's establishment of NOx budget trading program
similar to what is proposed in the supplemental notice. Whether
allocations are calculated using output or input data, they should be
based upon an average of multiple years to reduce potential problems in

1 any state or source subject to unusual circumstances in a given specific
2 year. To assist in operational planning, we believe allocations in
3 five-year blocks are reasonable.

4 In the supplemental notice, EPA requested comment on input
5 versus output allocation systems. We believe that would be most
6 appropriate for EPA to determine its initial electric general NOx
7 budgets to the states, based upon each state's total net megawatt hours
8 of electric generation, all forms of generation, as a percentage of the
9 22-state total.

10 For example, if the Pennsylvania sources produced ten
11 percent of the total generation in the 22-state region during the
12 baseline period, then the Pennsylvania State budget should be ten
13 percent, with a 560,000 ton cap. This methodology should also be the
14 basis for allocation in each state under the model rule.

15 By providing every megawatt hour of generation with the same
16 level of allocation, this methodology would support a more appropriate
17 internalization of environmental costs into operation and investment
18 decisions.

19 Appropriately internalizing environmental costs into
20 business planning encourages investment in low and zero emitting
21 generation and technologies. Allocation based upon input, on the other
22 hand, provides less of an incentive to reduce emissions, and tends to
benefit a generation that has used the most fuel, which is not
necessarily a good proxy for promoting generation efficiency for efforts
to reduce emissions.

Thank you for the opportunity to share with you some of our

1 initial comments on the supplemental notice. We will be providing
2 additional detailed comments prior to the June 25th deadline. Thank
3 you.

4 MR. WILSON: Thank you.

5 MR. POCALUJKA: Good afternoon. My name is Louis Pocalujka,
6 I'm here on behalf of Consumer's Energy. We appreciate this opportunity
7 to share with you the concerns of our company regarding the SNPR for the
8 proposed ozone SIP Call.

9 We have previously presented both verbal and written
10 comments regarding the proposed SIP Call, stating that we believe that
11 it is, at best, premature, based on incomplete information, faulty
12 assumptions, and fails to provide the affected states adequate time to
13 review and comment.

14 The SNPR does nothing to change this opinion. In fact, the
15 sheer size of the SNPR and the agency's continuing statements about
16 adding more information to the docket as it becomes available
17 demonstrates that the proposed SIP Call was, indeed, incomplete and
18 premature.

19 My comments today will focus on three points. First, you
20 won't get there from here. The one-size-fits-all emission limits,
21 NOx-only strategy proposed by EPA, will not be the panacea for ozone
22 non-attainment problems.

Modeling analyses conducted by the State of Michigan
continue to show that the impact on the Northeast of a .15 pound per
million BTU emission limit for Michigan is virtually indistinguishable
from that of a limit of .35 pounds per million BTU. In any case, NOx

1 reductions by themselves will not produce attainment, and all the
2 lingering goes on non-attainment areas.

3 There are fundamental real-world problems with the
4 implementation of EPA's proposed NOx strategy by the year 2002. Some of
5 the many major impediments include: There is inadequate capacity to
6 manufacture enough SCR catalyst to supply existing units and new
7 installations, even if only 50 percent of the capacity identified in the
8 SNPR were to install SCR systems in time to meet a 2002 compliance date,
9 even if the manufacturers can double their current capacity within the
10 next two years.

11 There's a shortage of engineering and construction firms
12 qualified for the design and modification of existing units. Air
13 permitting will be a major issue, particularly for units installing SCR
14 technology in or near urbanized areas.

15 Of particular concern will be the utilization and emissions
16 of anhydrous ammonia. A 2002 compliance date for .15 pound per million
17 BTU does not allow for orderly scheduling of outages for electric
18 utilities.

19 Two, the process. Consumer's Energy has many concerns
20 regarding the process being employed by USEPA. USEPA is not under any
21 court order to have a final rule in place by September, 1998, nor is the
22 agency required to have full implementation by the year 2002. The
schedules and milestones prevent adequate review and comment, and
severely limit the abilities of the states and affected parties to
develop and implement plans which will produce the state goal,
attainment of the ozone standard.

1 OTAG was created to deal with the one-hour standard. The
2 SIP Call and the SNPR were issued to deal with transport and its affect
3 on the one-hour standard, with an eye towards the new eight-hour
4 standard. As the process has evolved, the agency has openly put more
5 and more emphasis on the eight-hour standard, making this process a
6 defacto eight-hour SIP Call. While this may appear to be a reasonable
7 attempt at good public policy, it circumvents the formal process for
8 designating non-attainment areas, and issuing SIP Calls for the new
9 standard, and renders meaningless, promises made by USEPA to Congress.

10 A 12-month schedule to the states to revise and submit final
11 SIPS, including rules and enabling legislation is unreasonable. Twelve
12 months would be optimum for a SIP provision that was not controversial;
13 this one will be very controversial.

14 The proposed SIP Call and SNPR are written
15 to restrict the flexibility and planning options and attainment
16 demonstration modeling by the states. EPA has proposed emission caps,
17 defined a strategy for electric utilities, proposed a model trading
18 program outlined to prove ability criteria and proposed a FIP. While
19 the agency provides statements that the states may choose alternative
20 approaches, the states are clearly being driven to selecting EPA's
21 proposal, or else.

22 Three, the additional modeling results. We are disappointed
by EPA's persistence in relying on the methodologies and modeling
approaches used during the OTAG process, while ignoring OTAG's strong
recommendation to allow the states adequate time to conduct more
detailed subregional modeling. Additional approaches and metrics are

1 available and are being implemented to the degree that the schedule will
2 allow.

3 We also have serious concern over the agency's attempts to
4 use the OTAG technologies and episodes to model eight-hour
5 non-attainment areas to test eight-hour control strategies. The agency
6 has neither defined an acceptable eight-hour modeling protocol, nor have
7 they put out such a methodology for comment and peer review.

8 Consumer's Energy recommends that USEPA accept offers being
9 made by states and industrial groups to prepare credible alternatives to
10 the proposed SIP Call. As currently constructed, these alternatives
11 will include substantial NOx reductions by the year 2002, which will be
12 below the levels required by the acid rain provisions. These reductions
13 will be matched with planning and subregional modeling to provide a plan
14 that will result in ozone attainment.

15 Consumer's Energy expresses its support for comments that
16 will be offered by the Michigan Department of Environmental Quality,
17 Southeast Michigan Council of Governments, Detroit Edison, Michigan
18 Manufacturer's Association, and comments that have been offered the
19 Utility Air Regulatory Group.

20 We will file more detailed written comments by the end of
21 the comment deadline.

22 MR. WILSON: Thank you very much.

MR. STOLPMAN: Louis, you focused part of your comments on
your ability to perhaps hit the compliance target date, and talked
about, you've looked at the supply of capacity to produce the catalyst,
I think you talked about permitting for the use of ammonia, or whatever.

1 I don't know whether you've submitted details on that for
2 comment. That would be very helpful. Is there a date, have you
3 determined that there is a date by which you could comply, or is it
4 simply determined that you can't make it by 2002 or 2003?

5 MR. POCALUJKA: I'll take that in pieces.

6 MR. STOLPMAN: Okay.

7 MR. POCALUJKA: We have the detailed engineering data to
8 back that up, and I believe that will be incorporated as part of our
9 formal written comments to the SNPR. Our management has shared this
10 information with representatives from EPA as recently as two weeks ago.

11 We cannot meet a 2002 deadline. There is simply not enough
12 manufacturing capacity for the catalyst, even if only half the units
13 have to install SCR technology. Can we meet a later implementation
14 date? The answer is yes. I can't give you that date right now, but
15 it's not 2002.

16 MR. STOLPMAN: Thank you.

17 MR. WILSON: Thank you all very much for coming. We
18 appreciate it. The next group of three is first, Lenny Dupuis, and then
19 Matthew Hare, and Yvonne McIntyre, please. Mr. Dupuis.

20 MR. DUPUIS: Good afternoon. I am Lenny Dupuis,
21 representing Virginia Power. In the SNPR, EPA states that it will
22 consider alternative approaches to its current proposal, which seeks to
impose stringent emission budgets for 22 eastern states.

 As you know, the governors of ten Midwest and Southeast
states have joined together to formulate a framework to address ozone
problems in the Eastern United States. Based on the concepts outlined

1 by the ten governors in their letter to President Clinton, we believe
2 this plan will offer a reasonable and constructive alternative to the
3 SIP Call, and we look forward to reviewing the governor's proposal upon
4 its release. Virginia Power supports this initiative, and we sincerely
5 hope that EPA will give serious consideration to this proposal.

6 As members of the Alliance for Constructive Air Policy, we
7 are voluntarily offering initial reductions in NOx emissions that will
8 achieve system-wide reductions of about 25 percent beyond Title IV
9 requirements for our system, with additional reductions, if shown to be
10 necessary, by appropriate subregional modeling analysis. It is our hope
11 that we can work with EPA and our states in formulating these
12 alternatives.

13 While the SNPR solicits comments on a number of elements of
14 EPA's proposal, the notice fails to address several flaws at Virginia
15 Power, and many others addressed in previous comments.

16 EPA still has not demonstrated SIP inadequacies on a
17 state-by-state basis, which we believe is required under the Clean Air
18 Act. While the modeling presented in the SNPR evaluates the impacts of
19 the proposed NOx budgets, it does not provide support for EPA's claim
20 that its 22-state SIP Call is needed to address ozone non-attainment
21 problems. There is no way to determine how much of the benefits
22 achieved by the assumed reductions are due to local, versus more distant
control measures.

Furthermore, EPA continues to base its conclusions regarding
significant contribution on zero-out modeling that eliminates all
man-made emissions, and multi-state subregions, to justify NOx emission

1 reductions primarily from large stationary sources.

2 We question EPA's authority to set NOx budgets for the
3 states, and believe that the states have the responsibility and the
4 authority to determine what pollutants to control, and the specific
5 control measures that are necessary to correct identified SIP in
6 adequacies.

7 Although EPA had solicited comment on a flexible
8 implementation time frame in its initial proposal, it appears that EPA
9 has abandoned this flexibility in the SNPR with a 2002 compliance
10 target. We do not believe it will be feasible to install the required
11 technology across the large number of units that will be affected by the
12 SIP Call within this time frame.

13 A phased approach, such as that established by the OTC to
14 implement its MOU would be more reasonable. Furthermore, we do not
15 believe Section 126 petitions should be driving this schedule for
16 actions related to the SIP Call. Unfortunately, that appears to be the
17 case.

18 Virginia Power strongly supports trading and the idea of
19 market-based programs that achieve required reductions more
20 cost-effectively. However, we believe that EPA has overestimated the
21 potential cost savings of its program. First, we are concerned whether
22 enough excess tons will be generated to provide a robust trading
program, given the stringent levels of controls proposed for the sources
that are envisioned to participate under program.

Second, we believe many states have expressed reservations
about the workability of a regional trading program applied over a large

1 geographical area, and may, in fact, restrict trading due to more local
2 air quality concerns.

3 We believe that a trading program, whether applied over a
4 22-state region or a smaller subregion, should be designed with
5 provisions that allow states complete authority in allocating
6 allowances, provide allocation periods of at least ten years, allow
7 emission banking and early reduction credits, with minimized
8 restrictions on the use of banked allowances, and minimize monitoring
9 and reporting requirements, where possible.

10 The cost-effectiveness of control strategies must be tied to
11 the air quality impacts and benefits such controls produced. A metric
12 focus on dollars per part per billion of ozone reduced would be more
13 appropriate measures of cost-effectiveness than one aimed exclusively on
14 the amount of NO_x removed. We applaud EPA's efforts to correct some of
15 the earlier deficiencies in the projected base inventories, but we still
16 question some significant state-to-state differences in projected growth
17 factors.

18 The SNPR seeks comment on a third set of growth factors,
19 based on updated forecast of electricity demand. However, these new
20 factors have not been published and should not be used prior to review
21 and comment.

22 We believe EPA's intent to propose FIPS for the states
coincident with its final rulemaking on the SIP Call and relative to the
SIP Call is presumptuous, and EPA should reconsider this action.

The SNPR is extensive and contains requests for comments on
a multitude of issues. We, therefore, urge EPA to extend the comment

1 period to allow effective parties adequate time to analyze, interpret,
2 and offer meaningful comments on this information.

3 EPA is under no statutory requirement to issue a final rule
4 by September, and this target should not be used to compromise the
5 thorough evaluation of the SIP Call in SNPR proposals.

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

9 MR. WILSON: Good. Thank you. Mr. Hare.

10 MR. HARE: Good afternoon. My name is Matthew Hare, with
11 the Michigan Manufacturers Association, an association of around 4,000
12 manufacturers in Michigan, from the biggest to the smallest.

13 On February 4th of this year we testified on the original
14 SIP Call, with concerns of a lack of finite modeling, lack of definition
15 of what constitutes significant, a lack of accurate emissions data base,
16 and a lack to fulfill the required SBREFA.

17 Today, though, we'd like to provide comments on the
18 supplemental proposed rule dealing with emissions trading. We are
19 appreciative of the confidence expressed by EPA that a market-based
20 incentive program has been improving our air, and that was our goal when
21 we began drafting our trading rule two years ago. That effort brought
22 together industry, regulators, environmental groups, and municipalities,
and just last week we saw three successful trades completed.

MMA believes that the model trading rule, as proposed, is a
bit cumbersome and restrictive to encourage active participation. The
success of our Clean Air program in Michigan lies in its use of

1 alternative approaches. These alternatives have led to nine out of ten
2 counties being redesignated, including the largest metro area to do so,
3 which is Detroit.

4 The supplemental rule does not define what is an acceptable
5 alternative program. That has us concerned. MMA is also concerned with
6 the failure to follow proper protocol. We saw it when SBREFA
7 requirements were ignored with the original SIP Call, and we are seeing
8 that failure again with the shift from a one-hour standard to an
9 eight-hour standard.

10 MMA would like to request the EPA to follow the proper
11 protocol and re-evaluate their emphasis, and to consider fulfilling
12 SBREFA requirements. We'd also like to request the EPA to consider
13 acknowledging our trading rule, and how that would impact the proposed.

14 Finally, we would like some clarification on a phrase that
15 has appeared a number of times in the SNPR, that if a state adopts the
16 model trading rule, it is, in essence, giving EPA the authority to
17 assist in implementing the program. A granting of that authority is not
18 a clear phrase, and deserves some clarification.

19 We are committed to assist in the development of
20 market-based incentive programs, and look forward to submitting detailed
21 comments by the June deadline.

22 MR. WILSON: Thank you very much. Ms. McIntyre.

MS. MCINTYRE: Good afternoon. My name is Yvonne McIntyre,
and I'm here representing Detroit Edison. At the February 4th hearing
on the proposed ozone transport SIP Call I indicated that Detroit Edison
was willing to do its fair share to address the ozone transport issue.

1 However, I also went on to state that the company does not
2 believe that, based on available technical information, the drastic NOx
3 emission reduction assumed for fossil-fired electric utility boilers was
4 justified. The SNPR does not adequately address the issues raised at
5 that hearing, nor the written comments submitted on March 9th.

6 EPA has continued to ignore its failure to establish that
7 Michigan, or any other state, contribute significantly to ozone
8 non-attainment in other states, allocate emission reduction requirements
9 based on the state's proportional contribution to the problem, and
10 provide adequate time for states to conduct local or subregional
11 analyses to better define appropriate levels and timing of controls.

12 Detroit Edison has already taken steps to substantially
13 reduce ozone precursors. We have been in compliance with the phase two,
14 Title IV limitations for NOx since 1996, fully five years prior to the
15 year 2000 compliance date. As a result, Detroit Edison ozone season NOx
16 emissions have been cut more than 20,000 tons. If necessary and
17 appropriate, additional reductions will be made to satisfy our ozone
18 transport responsibilities.

19 EPA has relied on OTAG modeling, and continues to utilize
20 OTAG methodology to target the states affected by the proposed SIP Call.
21 No state-by-state modeling has been done by EPA. In the SNPR, EPA made
22 no attempt to correct the shortcoming, despite the fact that modeling
tools to do so on a state-by-state analysis exists and are available to
the general public.

 Detroit Edison and others have provided EPA a discussion of
the merits of one such model, the CAMx model, and the results of

1 analyses that have been performed.

2 Michigan recognized the deficiency of the OTAG methodology
3 and independently conducted CAMx modeling to understand the state's
4 contribution to ozone transport. Detailed results were submitted as
5 part of Michigan's written comments prior to the March 9th deadline.

6 EPA certainly could have done the same type of CAMx analysis
7 to assess the relative contribution of upwind states to ozone
8 non-attainment areas; however, this route was not chosen.

9 Consequently, the EPA's photochemical grid modeling
10 conducted subsequent to the original proposed ozone transport SIP Call,
11 and ascribed in the SNPR, does not adequately answer the obvious
12 question, which states contribute what, and where, and more importantly,
13 how much ozone benefit is provided by SIP Call emission reductions in
14 Michigan, or any other state?

15 Michigan has conducted additional CAMx modeling with the EPA
16 data bases used in support of the SNPR. It must be pointed out that
17 accuracy problems remain in these data bases, which are the foundation
18 for the revised state budgets proposed. Baseline 1995 and 1996 heat
19 input data does not reflect continuous emission monitoring reports
20 submitted by Detroit Edison to EPA for these periods.

21 Although adjustments were made by EPA to the growth rate
22 assumptions for Michigan Electric utilities, they continue to understate
documented company estimates. Comments supplied previously to EPA by
Detroit Edison and the State of Michigan have not been incorporated into
the SNPR data bases.

The state's contribution, and those of 23 other source

1 areas, over 30 potential ozone problem areas in the Eastern United
2 States, have been estimated using CAMx. Information has also been
3 provided on the expected change and contribution when the SIP Call
4 budgets are applied.

5 Results of these new analyses show that the ozone benefit
6 downwind to Michigan associated with the proposed 30 percent reduction
7 in NOx emission from the state, 60 percent reduction from projected 2007
8 Michigan Utility emissions, is extremely small.

9 Specifically, CAMx output indicates that beyond a distance
10 of about 200 miles from Michigan, the maximum benefit, as measured by
11 ozone reduction, will only be one part per billion, yet the cost of
12 achieving the SIP Call budget in Michigan is extremely high. Detroit
13 Edison's capital expenditures alone are expected to exceed \$400 million.
14 The company does not believe that these results support the actions
15 taken by EPA in the SIP Call.

16 An alternative approach must be utilized to establish a fair
17 and equitable means of addressing ozone transport. Detroit Edison
18 endorses the proportional responsibility concept that has been suggested
19 by Michigan.

20 Once the significant contributors of an ozone problem are
21 established, each state's proportional share of the solution can easily
22 be calculated using CAMx, then each contributing state can determine
what level and type of emission reductions will be required to provide
the necessary ozone benefit. This approach allows any state with an
ozone non-attainment area to approximate the level of ozone reduction it
can expect from upwind states.

1 Where proportional responsibility is incorporated into the
2 decision-making, the uniform across the board drastic cut in utility NOx
3 emissions proposed by EPA might not be the best solution to the problem.
4 However, additional subregional modeling, with corrected emission
5 inventories, clearly must be conducted to fully understand and address
6 this complex issue.

7 EPA has indicated that it will take into consideration any
8 additional modeling submitted by the comment period deadline. The 45
9 days provided in the SNPR is simply too short. EPA should extend the
10 comment period to cover at least 120 days, to allow states sufficient
11 time to perform the necessary analyses to determine the most
12 cost-effective levels of control appropriate in that state or region to
13 address the ozone transport.

14 Apparently, EPA has initiated or intends to initiate its own
15 new modeling analysis to further evaluate the cost-effectiveness of the
16 proposed SIP Call. The states should be afforded the same opportunity,
17 with the expectation that EPA will consider the results of this
18 analysis. Obviously, additional time is necessary to complete both
19 efforts.

20 I thank you for the opportunity to testify at this hearing,
21 and we will be submitting detailed written comments by June 25th.

22 MR. WILSON: Thank you.

 MR. STOLPMAN: Mr. Hare, I take it from your testimony that
you support emissions trading, but you indicated -- I think you said
that the modeling trading rule is cumbersome. It would be very helpful
for us, that would be fine if you could give us your points in your

1 written submission.

2 MR. HARE: Sure.

3 MR. STOLPMAN: If you could point out any of those
4 cumbersome -- the cumbersome nature now, briefly, that would be welcome
5 as well.

6 MR. HARE: I think we will supply those in written form. I
7 think you'll find a lot of what has been said already lying in the
8 reporting requirements and the qualifiers for credits, but certainly in
9 our written comments we'll have pretty detailed examples of what we are
10 talking about.

11 MR. STOLPMAN: That would be helpful. Thank you.

12 MR. WILSON: By the way, Mr. Hare, I don't remember if you
13 talked about it in your statement, but have you looked at the benefits
14 of the reductions within Michigan? If I remember our analysis, it
15 suggested that Detroit would be able to meet even the new ozone standard
16 with these reductions without requiring additional local controls of
17 small business in that area. Have you looked at that to see if you
18 agree with that analysis?

19 MR. HARE: Not in detail, but you might be asking, certainly
20 --

21 MR. WILSON: If you have a chance, it might be useful --

22 MR. HARE: Sure.

MR. WILSON: -- if you had comments on that. Okay. Thank
you all very much for coming. We appreciate it. The next three are
David Arthur, Joel Bluestein, and Mark Brownstein, please. Good
afternoon.

1 MR. ARTHUR: Good afternoon. My name is David Arthur, I
2 work for the firm of Dykema-Gossett, and I am here today representing
3 both SMCOG, the Southeast Michigan Council of Governments and the City
4 of Detroit. We want to thank you for this opportunity to present
5 comments on the proposed rulemaking.

6 On February 4, 1998, both SMCOG and Detroit provided
7 comments on the original rulemaking proposal, and we specifically
8 requested that the issue of ozone transport be based on a fair share of
9 approach, considering such factors as the proportional ozone
10 contribution of various states to downwind areas, the level of ozone
11 reduction benefit that would result from controls in a particular state,
12 the relative costs associated with achieving those ozone reductions, and
13 possible local dis-benefits.

14 We continue to request that EPA fully consider that
15 testimony and respond to both our concerns and our suggested approach.

16 Following that testimony, we submitted extensive comments to
17 the proposed rulemaking, including a large volume of technical modeling
18 information. That modeling was conducted to assess the impact of
19 Michigan on other states, as well as to assess the benefits of different
20 levels of control.

21 That modeling clearly demonstrated that Michigan's impact on
22 downwind areas was extremely limited. That modeling also clearly
demonstrated that the difference in benefits between different levels of
NOx emission control were minimal. We acknowledge that the modeling was
based on the OTAG emission inventories, and committed to an update when
USEPA's revised SIP Call inventory was available.

1 As promised, we are in the process of conducting additional
2 modeling analysis using the same emission inventory USEPA used in its
3 modeling analysis. We intend to submit as much information as possible
4 by the June 25th deadline to this rulemaking notice.

5 In the meantime, I want to summarize what we've learned so
6 far. First, we have confirmed that the level of long-range ozone
7 transport to most areas is extremely limited. Second, much of the ozone
8 reduction benefit that would be achieved by implementing the SIP Call
9 could be achieved with less control, and likely far less cost.

10 Third, we disagree with USEPA's assertion that implementing
11 major NOx reductions will bring Southeast Michigan and several other
12 areas into compliance with the eight-hour standard.

13 This assertion is premature, it assumes that modeling done
14 to date is equivalent to the much more rigorous attainment demonstration
15 work that EPA normally requires of the states.

16 Now, we question whether the issues, criticisms, and
17 suggested alternatives proposed in our previous testimony and in our
18 considerable comments on the rulemaking are being fully considered.
19 Consider these developments.

20 During the OTAG process, USEPA's emphasis continued to be
21 that the SIP Call would be based on the then existing one-hour standard.
22 Now, the USEPA has changed course and shifted the issue to attainment
with the new eight-hour standard. When technical analysis and
information was prepared and critical of the benefits with respect to
the one-hour standard, EPA changed the issue to that of helping to
achieve the new eight-hour standard.

1 When was planning responsibility for attainment of a new
2 ambient air quality standard taken away from state and local
3 governments? We are informed that USEPA is in the process of preparing
4 federal implementation plans in anticipation that some states may not
5 comply with the provisions of the final SIP Call.

6 Our understanding is that the FIP process is designed for
7 situations where states have not met their responsibilities with respect
8 to either preparing or implementing a state implementation plan.
9 Anticipation that a state will not meet its responsibilities to comply
10 with an as-yet incomplete regulatory action hardly justifies preparation
11 of a federal implementation plan.

12 We are concerned about the level of USEPA's objectivity in
13 reviewing reasonable comments and concerns about the proposed regulatory
14 action, while at the same time preparing FIPs built around a draft
15 proposal out for review and comment. We have similar concerns with
16 respect to the substance and process of EPA's actions on the Section 126
17 petitions.

18 The SIP Call proposal in the supplemental notice continues
19 to be focused on NOx emissions budgets for the 22 states and the
20 District of Columbia. Proposing NOx emission budget, as opposed to some
21 emission reduction target, as is typically done in this SIP planning
22 process, has major policy implications.

 The USEPA has determined, in effect, that states must adopt
NOx emission budgets as the only way to achieve desired results and
reductions of ozone transport.

 The emissions cap approach has serious consequences for both

1 Southeast Michigan and the City of Detroit. Having a federally imposed
2 cap not only affects air quality, it has consequences for the economic
3 structure of the area.

4 Finally, we recently received a copy of a report titled,
5 "USEPA's Approach for New Clean Air in Southeast Michigan." This
6 appears to be a primer prepared by USEPA to garner support for USEPA's
7 SIP Call proposal. This primer raises major concerns.

8 It amounts to advocating a position on an issue, which is
9 still under review and subject to revision based on comments received.
10 Again, it indicates that the agency has already made its decision. This
11 diminishes the healthy discussion and debate that should be taking place
12 as a result of comments during this rulemaking process.

13 In fact, if the document is what it says it is, it's USEPA's
14 approach for clean air in Southeast Michigan, it is not the state's
15 approach, nor the approach of a local elected official, it is the
16 federal government's plan.

17 Again, when did the SIP Call become a substitute for state
18 and local planning for attainment and maintenance of air quality
19 standards, as required in the Clean Air Act?

20 The report also claims that USEPA's new approach will speed
21 the achievement of the ozone standards, encourage urban redevelopment,
22 and help slow urban sprawl. We submit that strategies to achieve the
new ozone standard encourage urban redevelopment and slow urban sprawl
are policy matters to be resolved locally.

We recognize that the origin of OTAG and the USEPA SIP Call
proposal is to reduce ozone transport, particularly to the Northeast

1 states; therefore, justifying the SIP Call based on USEPA's view of how
2 it will result in achieving a new standard, and other matters that are
3 local decisions, is both inappropriate and inconsistent with the
4 transport provisions of the Clean Air Act.

5 MR. WILSON: Okay. Thank you.

6 MR. BLUESTEIN: I'm Joe Bluestein, I'm representing the
7 Coalition for Gas-Based Environmental Solutions. We're pleased to have
8 this opportunity to comment on the supplemental rulemaking. We'll file
9 additional comments later on, but have a few short comments today.

10 The coalition is a group of natural gas producers,
11 pipelines, and distribution companies advocating policies that recognize
12 the environmental benefits of gas and gas technology. We support the
13 NOx budget approach to control the NOx emissions related to regional
14 ozone transport, and we believe that the budget cap and trade approach
15 is a cost-effective way to provide verifiable emission reductions for
16 large stationary sources.

17 One of the benefits of the cap and trade program is that it
18 encourages and rewards efficiency, once it is running, and it should
19 further promote a positive environmental outcome and overall efficiency
20 by applying fuel-neutral output-based allocation of allowances.

21 The goal of this program is to promote the provision of
22 certain services, namely, electricity and steam generation, with a
minimum environmental impact, in the most cost-effective way.

Allocating allowances, based on output, relates the
emissions to the product rather than the heat input, and encourages and
recognizes efficient low-emissions delivery of a product, rather than

1 subsidizing high fuel users or polluters.

2 In addition, the program should, at a minimum, include all
3 fuels, not just fossil fuels. By-product waste and bio-mass fuels all
4 produce NO_x, and should be included in the program; otherwise, the cap
5 has a large hole in it. Also, allocating based on output to all
6 sources, including, for example, renewables, provides inherent support
7 for renewables without the need for set-asides or mandates.

8 On the topic of allocation systems, we support the third
9 option proposed by EPA, namely, to start output-based allocation
10 immediately for those sources for which it can be done, meaning electric
11 generators, and then phase output-based allocation in over time, as
12 protocols are developed for other sources.

13 There is no reason to delay what we can do today, and the
14 electric generating units are the largest segment of the emissions
15 inventory, so there is no reason to wait.

16 EPA has raised a number of other questions regarding the
17 mechanics of output-based allocation, some of which we have addressed
18 before, but we will address them again in our written comments.

19 We also support the idea of the five-year advance rolling
20 reallocation, this ties the budget operation to the actual operation of
21 the affected sources, while giving some forward certainty to operators,
22 and brings new sources into the system in a simple way.

On banking, we support the encouragement and recognition of
early reductions, as long as there are adequate controls to ensure the
environmental integrity of the program.

We also agree with EPA that uniformity of program elements

1 between states is very important, this is also reflected in the White
2 House statement on electric restructuring, and several letters from the
3 Northeastern governors to the administrator, and we are convinced that
4 the EPA needs to require consistency on certain aspects of the model
5 rule, including allocation procedures, although states should be free to
6 determine the setting of budgets for different emitting sectors.

7 We are also very concerned about the cost and complexity of
8 the Part 75 monitoring that will create an unreasonable burden on
9 non-utility sources, who may never get any advantage from the program,
10 and we put an economic risk for no reason. As an example, new clean
11 non-utility generators, whether they're burning coal or gas, may be
12 already meeting or exceeding the nominal limits, may already have CEMs,
13 although not Part 75 CEMs.

14 Unless EPA is very forceful in this program, they will get
15 no benefit from this program, they will not have any opportunity to
16 trade, and they will not receive any new flexibility from the program,
17 but they will be required to replace their existing CEMs with very
18 expensive Part 75 CEMs, and the result will be basically to make those
19 clean sources less economic in a competitive market, while offering
20 nothing in return, and that's just doesn't seem to be good policy.

21 Now, we recognize the development of new small re-generation
22 sources may require the application of a lower applicability threshold
in the future, and if there's evidence of this occurring, we think
extending the cap is probably the best method of addressing the issue.

At the same time, we applaud the discussion of integration
of NSR within the budget system. If there's a robust cap with an

1 appropriate coverage, there should be no need for a separate offset
2 program, and ultimately perhaps no need for technology requirements
3 beyond some nominal level. Fully integrating these programs will
4 provide the full value and flexibility of the budget system to the
5 control of ozone precursors, and we think that's an important direction
6 to move.

7 Similarly, the integration with Title IV is an important
8 step, but we think the proposal is too little. There needs to be
9 integration with Title IV to provide the intended flexibility.

10 I hate to be pessimistic, but since the annual cap that is
11 proposed by the EPA in this case has not even been discussed by any of
12 the affected states, to my knowledge, it seems unlikely that it will
13 appear any time in the foreseeable future. Without that cap, there is
14 no integration, and the value of the budget program is significantly
15 diminished.

16 I think one of the clearest examples of the value of an
17 allowance trading program is the opportunity to move allowances to avoid
18 expensive controls on a smaller, under-utilized unit, and without Title
19 IV integration, that option will be severely curtailed or eliminated.

20 We appreciate that the EPA has worked very hard to advance
21 the state of the art in environmental regulation in this proposal, we
22 appreciate the thought and effort, and we'll work to help advance the
development of a flexible but environmentally beneficial NOx budget
program. Thank you.

MR. WILSON: Thank you. Mr. Brownstein.

MR. BROWNSTEIN: My name is Mark Brownstein, I'm Manager of

1 Corporate Environmental Issues for Public Service Electric and Gas
2 Company. PSE&G is the largest utility in New Jersey, serving
3 approximately 2.2 million residential and commercial customers, or put
4 in another way, about 5 billion people. Since 1990, PSE&G has
5 voluntarily reduced its NOx emissions by over 70 percent, on our way to
6 meeting a voluntary 80 percent NOx reduction commitment by the year
7 2000.

8 We've gone from representing about 27 percent of New Jersey
9 statewide NOx inventory, to representing less than five percent in 1997.
10 We supported EPA's new ozone and PM NACs, and we are in the forefront of
11 identifying the need for uniform power plant emission controls
12 concurrent with the industry's restructuring.

13 Through the work of OTAG, NARSDON, NESCAUM, and others, we
14 now know that pollutants released into the air in one state are not
15 stationary. They move with air currents, traveling significant
16 distances from their sources. Many areas in the Eastern half of the
17 United States simply cannot attain air quality objectives by
18 implementing local reductions alone.

19 Furthermore, many areas are being forced to adopt costly
20 local reduction programs in order to compensate for non-localized NOx
21 emissions. That is why PSE&G supports EPA's ozone transport rulemaking.
22 We believe the proposed rule is a reasonable strategy that recognizes
the complex regional nature of ozone transport, and properly addresses
the resulting ozone non-attainment problems within the SIP process.

To help demonstrate the regional sources of ozone pollution,
I've brought with me this brief movie taken from the OTAG air quality

1 assessment committee Web site, easily accessible to you by cruising the
2 Web.

3 This visualization, which is based on 1985 emissions
4 inventory data, and monitored air ozone data for the summer months of
5 1991, illustrates how particles representing NOx emissions are
6 transported throughout the eastern half of the United States by
7 windfields in the 28 hours following their release. There's technical
8 details on this that you're welcome to review, attached to my testimony.

9 As you can see, transport of ozone and NOx is not a simple
10 linear phenomena. While there is an overall trend of NOx emissions and
11 ozone moving to the north and east, on any given day, air flow and wind
12 currents drift and shift so that NOx emitted in any one state can travel
13 in different directions at different times. In light of this complex
14 regional pattern of contribution, EPA's proposed SIP Call reflects the
15 most reasonable approach to identifying and remedying the contribution
16 problem.

17 EPA has properly used its authority under Section 110 to
18 develop a weight of the evidence test that relies on cumulative modeling
19 data and state-of-the-art air quality analysis to identify contribution
20 to ozone non-attainment problems in various states.

21 Given what we know from this rich body of information, a
22 static, linear source or state-specific test of contribution will be
contrary to good science and public policy.

With this point in mind, PSE&G wants to make four points
today regarding EPA's proposed SIP Call and the guidance in the
supplemental notice. First, PSE&G believes that the goal of the SIP

1 Call is to reduce background levels of ozone and ozone precursors
2 significantly, such that cost-effective local measures can be employed
3 to bring all areas of the SIP Call states into attainment with the
4 pre-existing one-hour standard for ozone.

5 Second, the keys to achieving this goal are timing,
6 uniformity, and tonnage. Specifically, EPA should require
7 implementation of NOx controls by May, 2003, based on a uniform
8 emissions standard of .15 pounds per million BTU, with a cap on
9 emissions at the proposed 564,000 tons.

10 Third, to the maximum extent possible, EPA should strive to
11 minimize the costs associated with achieving the timing, uniformity, and
12 tonnage requirements essential to the SIP Call. Implementing a regional
13 trading program concurrent with the NOx control requirements will
14 facilitate achievement of the 564,000-ton cap, the uniform .15 standard
15 by 2003. We believe that EPA should try to design the trading program
16 to provide credit for early reductions, allow banking, and if possible,
17 allocate credits based on an output-based performance standard.

18 Fourth, while EPA supports trading, and strongly supports
19 trading, we do not believe that efforts to design a 22-state regional
20 trading program should interfere with the adoption of the SIP Call this
21 September or alter the contents of EPA's proposal.

22 While a 22-state trading program would facilitate
implementation of the SIP Call, it is not critical, since the
cost-effectiveness of the rule is not significantly affected by the
interstate trading aspects of the proposed trading program.

Furthermore, insofar as eight of the twenty-two states

1 covered by the SIP Call are already participants in the regional ozone
2 transport commission trading program, the advantages of regional trading
3 area already available to many power plants.

4 I thank you for the opportunity to have commented, and
5 further detail is in written testimony that was given to you today.

6 MR. WILSON: Okay. Thank you very much. You win the
7 audiovisual award for the day. I'm not sure, one of the last points you
8 were making about the trading program shouldn't hold up the -- what did
9 you mean by that?

10 MR. BROWNSTEIN: Trading is very important. It's important
11 for improving the cost-effectiveness of what it is that you're trying to
12 do, it's important for the flexibility for companies like ourselves, who
13 are going to have to comply with this.

14 But I want to remind EPA that the primary mission here is
15 not to design the perfect trading program, the primary mission here is
16 to get the emission reductions necessary to enable local non-attainment
17 areas to come into attainment, that's the goal.

18 Trading helps further that goal, but I'm concerned that as
19 we get further and further into the details about how you do a trading
20 program this way, and how you do a trading program that way, that it can
21 sort of be distracting from what your primary mission is, which is to
22 get us the emission reductions on a regional level, so that those of us
who are in local non-attainment areas can actually attain the standard.

PSE&G is fortunate in that we are in a state that has its
own state trading program already in place, we're also fortunate in that
we're part of the OTC, which already has a regional trading program in

1 place, so we feel relatively comfortable that regardless of what happens
2 with your attempts to develop a 22-state trading program, that we will
3 have the regulatory flexibility mechanisms we need to comply with this
4 rule cost-effectively.

5 MR. WILSON: Okay.

6 MR. SEITZ: Mr. Arthur, I had a couple of questions. First
7 of all, you raised the fact that we are looking at both the one-hour and
8 eight-hour standard, and are anticipating proposing FIPs when we do the
9 final SIP Call as new issues. I mean it's certainly been around since
10 our proposal, and both, I think, were discussed at the latter parts of
11 the OTAG. Did you mean --

12 MR. ARTHUR: No, I didn't --

13 MR. SEITZ: -- that you just heard about them, or --

14 MR. ARTHUR: No, I didn't mean to raise them as new issues
15 with respect to our understanding of them, but raised them as issues
16 that give us cause for concern.

17 MR. WILSON: And also, just to be clear, so that nobody --
18 any materials we've put together to help people understand what our
19 proposal was shouldn't in any way be taken to suggest we've made any
20 final decisions about this rulemaking. We're obviously interested in
21 your comments, and all the rest, so we just want to make sure there
22 wasn't any confusion there.

The question I asked the previous Michigan representative,
your last point was you're hoping we're right, that you won't have to do
anything more locally. Do you have an assessment of whether we are
right or not in that regard?

1 MR. ARTHUR: We do not have an assessment. It's part of the
2 modeling that we're doing, that we hope to complete by the June 25th
3 deadline, and we'll make sure it's in our final comments.

4 MR. WILSON: Okay.

5 MR. SEITZ: Just a follow-up. So your testimony seems to be
6 that you're in the state that has the benefit of a trading program.
7 What is the design impact on a facility that does not have the benefit
8 of being in there? Don't you believe that in their design of what
9 they're going to do, the program of trading will be helpful to them in
10 deciding what their control would be?

11 MR. BROWNSTEIN: There's no question about it, trading is
12 going to be very helpful to any company that's going to face these
13 control requirements, there's no question about it. I was intrigued by
14 some of the discussion earlier in the day about whether or not we were
15 setting up a trading program to enable cross-company trading, and while
16 certainly cross-company trading helps further opportunities for cost
17 savings, it's not fully necessary.

18 If you're allowed to do even intra-company averaging, you
19 can still receive substantial cost savings, and I remind you that there
20 are some companies who have testified here today who stretch over
21 several states, and in and of themselves, probably have plenty of
22 opportunity to achieve cost savings through intra-company trading,
without ever having to go outside of their own system.

The smaller companies will benefit the most from a trading
program that allows them to trade with other companies. The larger
companies, assuming the states agree to allow them to do it, will be

1 able to trade amongst themselves, and that's not necessarily bad
2 outcome.

3 If I look at the fuel mix in our own system, we have some
4 very clean units and we have some relatively dirty units, and I fully
5 expect that we will maximize internal trading opportunities before we
6 ever went out to the larger marketplace, and so long as we have that
7 ability, we feel pretty comfortable we can do what we need to do.

8 MR. SEITZ: Thank you.

9 MR. WILSON: Thank you all very much, I appreciate you
10 coming. The next three people, Mike Menne, Kyle Danish, and Janet
11 Watts, please. Again, for those of you who are here and were scheduled
12 this afternoon, I thank you for adjusting your schedules so that we can
13 see if we can finish a little ahead of schedule.

14 MR. MENNE: I also appreciate you adjusting the schedule, I
15 had some difficulty getting here today, and I know I'm coming in a
16 little late, so I appreciate your --

17 MR. WILSON: That's okay.

18 MR. MENNE: -- allowing me to speak. I don't know if you've
19 been given my statement or not, as yet.

20 MR. WILSON: Yes, I --

21 MR. MENNE: I will really start on page two. The primary
22 message that I wanted to bring here today is to talk about a study that
will be done this summer that has critical importance to this issue.
During the OTAG process, a phenomena referred to as the isoprene volcano
in Southeastern Missouri was identified, and this referred to unusually
high isoprene emissions predicted by the Vice-2 model in the OTAG

1 modeling domain.

2 Our information suggests that the isoprene concentrations
3 predicted by the air quality models in this area are on the order of
4 three to five times greater than the highest isoprene concentrations
5 ever measured in the field.

6 The Illinois Environmental Protection Agency scientists
7 looking into this problem have stated that the emission factors for
8 certain oak trees located in this region are 700 times greater than
9 Maple trees, and have questioned this. This results in air quality
10 models predicting the transport of a massive amount of VOCs into the St.
11 Louis and surrounding regions under several of the episode days used in
12 the OTAG modeling analyses.

13 Modeling analyses performed by Ameren indicates that cutting
14 such emissions in half, still more than twice the highest measured
15 concentrations, significantly reduces the amount of ozone transported
16 from the St. Louis area into the Lake Michigan area.

17 In addition, these very high natural VOC concentrations
18 predicted by the model overwhelm any anthropogenic VOC emission sources,
19 unless it drastically affects the type of control strategies that an air
20 quality modeling indicates is necessary to reduce ozone in our region.

21 To address this concern, the National Center for Atmospheric
22 Research, NCAR, Boulder, Colorado, and Lake Michigan Air Directors,
LADCO, will be performing a VOC sampling study in Southeastern Missouri
for approximately two to three weeks this July. The NCAR research team
will be using tethered balloons to gather VOC samples at various
locations, and the LADCO team will be flying aircraft to also sample

1 VOCs.

2 The Missouri Electric Utility Committee is planning to fund
3 a project to be conducted by various universities to gather near-ground
4 VOC data in support of these upper air measurements being taken by NCAR
5 and LADCO.

6 It's our hope that this study will provide the data
7 necessary to develop a revised and more accurate Vice model for the use
8 in the UAM-V modeling system. Preliminary results are expected by the
9 end of August this year. While the schedule may be too late for
10 modifying the final SIP Call rule, EPA should examine the results of
11 this effort to allow the use of the improved information to adjust the
12 basis for the SIP Call prior to actual state implementation plan
13 revisions.

14 If it is shown through this data that state budgets and/or
15 transport assumptions may have been based on invalid science, the
16 regulatory process should be adjusted to reflect this latest
17 information.

18 I should note that if a change in the emissions model are
19 applied in the UAM-V modeling system as a result of this effort, it
20 could have ramifications elsewhere besides Missouri. Geogenic emissions
21 have been demonstrated to play a major role in the formation of ozone in
22 Illinois, Indiana, the southern states, and much of the Ohio Valley
region.

 Ameren Corporation believes the EPA regulatory program to
address air pollution problems should be based on sound science. We
will be submitting a detailed report on modeling conducted subsequent to

1 OTAG, and a critique of the OTAG modeling work as part of this
2 rulemaking.

3 I guess I should have identified myself for the record as
4 Mike Menne, Supervisor, Environmental Scientist from Ameren Corporation,
5 and I represent the operating companies of Union Electric and Central
6 Illinois Public Service. Thank you.

7 MR. WILSON: Thank you. Mr. Danish.

8 MR. DANISH: My name is Kyle Danish, and I'm here to present
9 the statement of Duke Energy. Improving ambient air quality in the
10 Eastern U.S. is something we can all get behind. Unfortunately, EPA's
11 supplemental notice, like its earlier proposal, is not linked in any
12 meaningful way to improving air quality and ozone non-attainment areas.

13 There are numerous legal, procedural, and technical
14 deficiencies throughout EPA's supplemental notice of proposed
15 rulemaking, including, but certainly not limited to, one, an
16 impermissible seizure of state authority; two, the use of a uniform
17 emission rate, with the effect of imposing retrofit technology
18 requirements on existing plants, without any statutory authority; three,
19 no assurance of reductions where they are truly needed; four, an
20 infeasible implementation schedule; five, lack of technical basis
21 stemming from misused and misrepresented OTAG data; and six, the use of
22 modeled impacts on eight-hour non-attainment areas, when the eight-hour
standard is not even currently implemented.

Any emission reduction should be a means towards one aim,
achievement of air quality improvements, where they are needed.
Widespread, wholesale reductions for the benefit of distant

1 non-attainment areas just don't make sense. Especially with the
2 implementation of the proposed trading program, there will be no
3 assurance that NOx or ozone is reduced where it needs to be reduced.

4 Duke strongly supports market-based approaches to pollution
5 abatement, but only with certain necessary provisions. The sulphur
6 dioxide allowance trading program demonstrates that a successful
7 market-based approach must have the following elements: One, a goal to
8 reduce overall loading, rather than improvement of local ambient air.

9 Trading over the vast region proposed by EPA makes no sense
10 and cannot be supported under Title I of the Clean Air Act. Two, a
11 relatively modest reduction goal that allows for the relatively easy
12 over control necessary to produce excess reductions for trading. Title
13 IV sought a roughly 50 percent reduction.

14 Three, sufficient lead time to allow potential allowance
15 buyers to confirm that there will be an ample supply of allowances to --
16 compliance through trading, rather than through control. Title IV
17 allowed over four years for phase one and over nine years for phase two.
18 And number four, preemption of state restrictions on trading.

19 Because EPA's proposal lacks all these elements, the
20 proposal will only tarnish the reputation of market-based pollution
21 control methods. EPA's trading proposal appears to be offered only as a
22 faint attempt to invoke the market-based mantra, with the hope that EPA
will track broader public support for the SIP Call.

The proposed trading scheme is doomed to failure. From an
air quality perspective, a 22-state area is too large to solve problems
where problems exist. Even EPA recognizes that reductions from areas

1 closest to the non-attainment areas have the most impact. For this
2 reason, EPA is considering restrictions on trading.

3 Instead, EPA should simply recognize this concern for what
4 it is, evidence that distant states should not be included in the SIP
5 Call. At a minimum, the budgets of distant states should incorporate
6 less stringent requirements, provided EPA can show that any such state,
7 in fact, significantly contributes to non-attainment.

8 EPA's offer to consider voluntary opt-in for new sources
9 further shows the illegality and capriciousness of EPA's proposal.
10 Allowing new sources to opt into the trading program and opt out of NSR
11 is contrary to the congressionally mandated NSR offset requirements for
12 sources in non-attainment areas. EPA does not have this authority. EPA
13 would permit precisely what Congress prohibited, net increased emissions
14 in non-attainment areas. If EPA is earnest about eliminating ozone
15 non-attainment areas, it cannot give this opt-in provision serious
16 consideration.

17 EPA also has made an illegal assumption that states must
18 revise their SIPs to adopt a budget. This flies in the face of the
19 Virginia v. EPA decision. In addition, EPA has failed to show the
20 connection between NOx emission budgets in upwind states and ozone
21 attainment in downwind states.

22 The whole focus seems to have shifted towards achieving
budgets and away from improving air quality. EPA has presumed the
solution, and thereby constrained the states, and most importantly, EPA
has reached the wrong conclusion regarding the need for an
cost-effectiveness of NOx reductions in North and South Carolina.

1 These and many other legal and technical flaws throughout
2 EPA's original and supplemental proposals have rendered both clearly
3 arbitrary, both should be withdrawn.

4 Any questions regarding this statement may be addressed to
5 Gary Rice of Duke Energy. Thank you.

6 MR. WILSON: Thank you. Ms. Watts.

7 MS. WATTS: The Tennessee Valley Authority appreciates the
8 opportunity to provide testimony on EPA's supplemental notice to its
9 proposed NOx SIP Call rule. I am Janet Watts, TVA Manager of Advanced
10 Production Technology and Regulatory Integration. Because of the
11 limited time, we will confine our comments to only a few issues.

12 Certainly, if there's anything in addition to public health
13 that EPA must keep in mind as it proceeds with this rulemaking is
14 awareness of the energy supply situation in this country. Last summer,
15 the Northeast and other areas faced unprecedented problems in meeting
16 the demand for electric energy. Analysis conducted by TVA and others
17 suggest that this summer will likely be worse.

18 Dreams of solar power, higher appliance efficiencies, and
19 energy conservation in the future do not keep the lights on today or
20 tomorrow. EPA must take great care to not worsen the energy supply
21 situation in the East. Electricity remains the cleanest and most
22 accessible energy supply available in this country.

 TVA believes that regional ozone transport is much more
limited than indicated in the 110 SIP Call rule. What is called for are
analysis and solutions that focus on local and possibly sub-regional
non-attainment problems. OTAG recommended this, and the governors of

1 the states in which TVA operates support such an approach.

2 As with many source sectors, NOx emissions from TVA's power
3 plants are contributing to subregional ozone levels. To address EPA's
4 new eight-hour ozone standard, TVA sources will have to be controlled
5 further. Recognizing that TVA is part of the problem, we must be part
6 of the solution as well.

7 TVA plans to control NOx emissions at its largest coal-fired
8 units using selective catalytic and reduction technology. This
9 includes, in part, installing SCRs at TVA's Cumberland and Paradise
10 plants. These are TVA's largest NOx sources and among the largest point
11 sources of NOx in the country.

12 We are, of course, reducing NOx emissions at other units as
13 well. Although TVA is taking this action to address TVA regional needs,
14 we are also mindful of EPA's proposed SIP Call rule.

15 To ensure the viability of this plan under this rule, it is
16 important that EPA adopt an unfettered NOx allowance trading and banking
17 program, and meaningful early reduction credit. In some instances, TVA
18 will be controlling its targeted units to below .15 pounds per million
19 BTU.

20 We must have the flexibility to rely on this over control to
21 avoid taking reductions at TVA plants that do not meaningfully
22 contribute to ozone attainment problems. This is not to say that TVA
believes that all tons of NOx are created equal with respect to ozone
non-attainment areas.

EPA acknowledges in their A&PR on the pending Section 126
petitions that NOx sources closer to ozone non-attainment areas have a

1 greater impact on those areas than more distant sources. TVA's initial
2 comments contained technical analysis that established this beyond
3 dispute.

4 But the variable influence of NOx sources does not
5 automatically compel establishing a NOx allowance trading and banking
6 program that is differentially based. Any kind of complication in the
7 NOx allowance trading and banking program will destroy its potential
8 effectiveness.

9 TVA is confident that forces other than EPA regulation in
10 the form of a differentiated model rule will help ensure that NOx
11 reductions are taken where they should be taken. No Southeastern state
12 will be shy about dictating where reductions must be taken to help solve
13 their non-attainment problems. Any utility that fails to take
14 reductions at plants that meaningful contribute to an ozone
15 non-attainment area, in anticipation that it can trade for reductions,
16 should not be surprised when the state does not allow this to happen.

17 This awareness will police an open NOx trading and banking
18 system much more efficiently and effectively than any kind of
19 differential flow control mechanism. Similarly, TVA supports and urges
20 EPA to adopt as a component of its model rule those NOx allowance
21 banking and credit for early NOx reductions below Title IV requirements.

22 Banking and crediting of early reductions will provide the
utility industry the flexibility it needs to respond to unusual or
unexpected demands for energy.

A restrained, limited NOx allowance banking program could
exacerbate the energy crunch that the Eastern United States is facing,

1 and negate the cost-effectiveness cited by EPA in the proposed SIP Call.

2 Again, thank you for the opportunity to share TVA's views on
3 this rulemaking. We will be submitting additional written comments at
4 the appropriate time.

5 MR. WILSON: Thank you very much. Ms. Watts, I had a couple
6 of questions. First of all, if I understand it correctly, I certainly
7 want to compliment TVA on the NOx control program you laid out in your
8 testimony.

9 I couldn't tell exactly with regard to our proposal, you
10 mentioned you're going to have some of your plants with SCR, some below
11 .15. Do you know how the overall program you're laying out compares to
12 what we were proposing in our November proposal?

13 MS. WATTS: I do, but we're still having some internal
14 review.

15 MR. WILSON: I see.

16 MS. WATTS: Hopefully, I could reveal that maybe next week
17 or the following week.

18 MR. WILSON: Similarly, on timing for the program, is that
19 also something you're working through, or do you know how the --

20 MS. WATTS: Well, I think the -- as every large utility is
21 facing, we have a series of outages that they're going to have to do
22 over a period of years, so I would be surprised if TVA is alone in
needing to start construction fairly soon. We also have some local
issues in Shelby County and some other places where we really are
compelled to reduce NOx significantly.

MR. WILSON: But do you know your overall timing compares to

1 the timing we proposed in our SIP Call proposal?

2 MS. WATTS: I think it's pretty compatible.

3 MR. WILSON: Okay. So it's in the range of the 2002 sort of
4 deadline. Okay.

5 There was one sentence I didn't really understand. You said
6 TVA is confident that forces other than EPA regulation will help ensure
7 NOx reductions are taken where they're taken.

8 Did you mean that it was okay to have a broad-based trading
9 program, because otherwise you'd make sure that you didn't do anything
10 within that screwed up local air quality situations, is that sort of
11 what you were --

12 MS. WATTS: I think the state will police it adequately, so
13 I think a broad trading program would be appropriate.

14 MR. WILSON: I see. Okay.

15 MR. SEITZ: There were some statements made that I just need
16 to comment on regarding the sulphur trade.

17 MR. DANISH: I should say I'm not authorized to answer
18 questions or respond to your comments on behalf of Duke Energy. My only
19 authority is to read the statement.

20 MR. SEITZ: Are you authorized to take the question back and
21 submit it for the record?

22 MR. DANISH: I'm authorized to take notes.

MR. SEITZ: Let me offer some things for notes then. The sulphur program is actually a 48-state program, so it is very much of a broad-based program, so to the extent it works, it is a bigger zone than the 22-state zone indicated in our SIP Call.

1 Secondly, you talked about the fact that the acid rain
2 program is, indeed, a modest -- the implication was this is a modest
3 goal. My guess is that if you look at the percent reduction of the
4 sulphur inventory, it's likely to be a larger reduction of the sulphur
5 inventory than the NOx SIP Call is of the NOx inventory.

6 Secondly, you indicated that there is preemption of state
7 action in the sulphur program, and although we encourage the states to
8 not restrict trading in any way, I think it's my understanding at least,
9 and I can be corrected by our lawyers, that if the states want to impose
10 restrictions, either for local air quality concerns or simply because
11 they want to restrict trading in some way, that they are still -- they
12 have the prerogative to go ahead and do that.

13 MR. DANISH: Can I make sure for the purpose of my notes, I
14 can clarify one of your comments. The second one was --

15 MR. SEITZ: As a fraction of the inventory, my guess is that
16 the indication was that the reduction of the total inventory that's
17 represented by the NOx SIP Call is about 35 percent of the inventory.

18 MR. DANISH: Okay. But that doesn't apply to the -- I'm
19 sorry. Are you implying also that it's modest with respect to the
20 sources that actually have to make reductions?

21 MR. SEITZ: You indicated that the sulphur program was
22 modest, and I'm simply saying --

 MR. DANISH: Okay.

 MR. SEITZ: -- that it may well have been more than 35
percent of the inventory. I'd need to go back and do the calculations.

 MR. DANISH: Okay. Sure.

1 MR. WILSON: Thank you all for coming, we really appreciate
2 your testimony today. I believe we're down to the last three people.
3 They are Bryan Roosa, Sarah Wade, and Rebecca Stanfield, if they're all
4 here. Those are the remaining people we had on the list who identified
5 that they wanted to testify. If there is anybody else who wants to,
6 please let us know, so we can get you on as well.

7 MR. ROOSA: Good afternoon. My name is Brian Roosa, and I
8 am the Deputy Director of the State of Michigan, Washington Office. I
9 appreciate the opportunity to share with you Michigan's deep concern
10 over the EPA's proposal to impose drastic NOx reductions on the State of
11 Michigan in order to mitigate high ozone levels in the Northeast states.

12 This testimony is provided on behalf of the Michigan
13 Department of Environmental Quality, and I will gladly convey any
14 questions you may have regarding these comments for a written response
15 from the Department.

16 Many of the concerns we have with EPA's proposal were made
17 at the February 4th hearing, and were included in our detailed written
18 comments submitted on March 9th.

19 These concerns included our belief that EPA's proposal is
20 premature and is not supportable by OTAG modeling conducted to date, our
21 concern over the requirement for states to reduce emissions of NOx by a
22 specific target amount before the necessary additional subregional
modeling is completed.

 Further, Michigan and other states made presentations during
the OTAG process which clearly showed that the transport from the
Midwest was not as predominant as EPA had originally theorized. Our

1 current modeling continues to support this conclusion.

2 Equally as important, we discovered there is a likelihood of
3 ozone increases as a result of NOx reductions. Studies have determined
4 that local NOx controls will result in ozone dis-benefits in that same
5 region.

6 We remain astounded that EPA has proceeded with a cap on NOx
7 emissions without a quality-assured emissions inventory. We are
8 concerned with the agency's cost analysis, which relies on extreme
9 control technology, rather than determining if the emissions from the
10 affected state are having a significant impact on ozone transport. It
11 is our assertion that EPA should consider an approach of minimizing
12 costs based on changes in ozone concentrations in downwind areas. We're
13 additionally concerned that the requirements of the law calling for
14 guidance from EPA have thus far not been met.

15 There were previous written comments submitted on March 9th.
16 We included results of modeling that have been conducted to date. The
17 modeling clearly showed that Michigan's impacts on downwind areas were
18 much smaller than implied by EPA's proposed rule, and the difference in
19 benefits to downwind areas by different levels of controls were minimal.

20 Additional modeling continues, and we will submit as much of
21 the modeling results as are available by the close of the comment period
22 on June 25th.

Michigan is not alone in its concern over EPA's proposal.
On March 9th, governors of ten states in the Southeast and the Midwest,
including Governor John Engler wrote President Clinton expressing their
opposition to EPA's proposed rule, and seeking additional time for

1 public comment.

2 Notwithstanding EPA's unwillingness to provide sufficient
3 additional time for public comment, these same ten states have
4 collectively evaluated modeling strategies for addressing the SIP Call
5 and are working in a collaborative fashion to provide a more complete,
6 alternative proposal in the time provided.

7 These states are attempting to devise an approach which will
8 result in the most efficient reduction of ozone in each of the states to
9 solve their own air quality problems, and to address our share, if any,
10 of the ozone problems in states that are downwind of us. The states'
11 proposal shall allow each state to derive its own solution to their
12 unique situation.

13 A major concern we have with the proposed EPA SIP Call is
14 the loss of state authority provided for in the Clean Air Act, which
15 allows states to plan the best strategy for addressing the ozone
16 problem. Under the Act is a state's responsibility to prepare a plan
17 for bringing areas into attainment with air quality standards.

18 This decision-making process is very important, and it
19 allows states to tailor the subsequent controls to the needs of the
20 affected area, and provide a strategy that is acceptable and workable.

21 We believe EPA is overstepping its authority with their
22 approach. It is restrictive and does not allow us to pursue alternate
strategies that may achieve equivalent results at far less cost.
Unfortunately, it appears that our previous communications to EPA
recommending alternate approaches for achieving appropriate reductions
continue to be ignored.

1 Further evidence of EPA's intent to overtly dictate controls
2 is their use of the Section 126 petitions of the Northeast states as a
3 backstop for the SIP process, as well as their unprecedented development
4 of federal implementation plans for the states prior to the adoption of
5 the proposed transport rule.

6 It is apparent that EPA has made up its mind regarding what
7 constitutes an appropriate control program, and that program is their
8 NOx budget approach.

9 My final comment addresses the major component of the
10 supplemental proposal, the NOx trading program. Unless EPA relaxes the
11 extremely NOx controls in the proposed rule, there will be few excess
12 emissions available to trade. The proposed trade program also makes it
13 difficult for a state to opt for an alternate program, such as
14 Michigan's existing open-market trading program. This is another
15 example of EPA's attempt to dictate the details of the states' controls
16 strategies.

17 In conclusion, we remain committed to do our share to reduce
18 air pollution and protect the health of our citizens. However, we also
19 believe that we can do the best job in determining the adequate
20 emissions reductions and controls strategies to address the ozone
21 problems in our state, as well as the ozone transport issue.

22 MR. WILSON: Thank you. Ms. Wade.

 MS. WADE: I'm Sarah Wade, with the Environmental Defense
Fund. I'm here to give just some brief comments today, we're going to
give more detailed written comments during the comment period.

 EDF has been an active participant in the efforts to develop

1 ozone control programs over the past couple of years. I wanted to start
2 today by saying we are pleased to see the SIP proposal being released.
3 It represents a great step forward in reducing the problems associated
4 with ground-level ozone, and we appreciate EPA's increased effort to
5 encourage states to develop firm emission caps for sources affected by
6 the SIP Call.

7 As we learned from the acid rain program, this focus on
8 environmental performance is a key factor in assuring the actual
9 reduction of air emissions. We'd also like to commend the EPA for
10 including appropriate monitoring and reporting requirements, which we
11 think are essential for verifying and enforcing compliance schedules in
12 the SIP approvability criteria.

13 That said, we are concerned about continued and new
14 weaknesses in the supplemental proposal. Today I'd like to highlight
15 three of our main concerns in regard to the NOx budget, the SIP
16 approvability criteria, and some of the design features in the trading
17 program.

18 First, we're dismayed that the NOx budgets for electricity
19 and non-electricity generating sources have increased by 15 and 14
20 percent, respectively. This increase underscores the uncertainty
21 inherent in the use of both factors and creates concerns for us at least
22 about artificial and inflated budgets.

We urge the EPA to consider an alternative approach that
would break the budget into two sections. The first will cover large
combustion sources that are already existing, and will be implemented
exactly as described in the proposal, where the uniform standard applied

1 after the growth is factored in.

2 The other component of the budget will be dedicated towards
3 new sources, and this portion of the budget should be capped as
4 currently described in the proposal; however, if actual growth is not
5 equal to the projection, then any surplus missions in that budget should
6 be retired in that year.

7 Such a configuration would prevent inflation of the budget
8 due to incorrect growth assumptions, while at the same time encouraging
9 the introduction of newer and cleaner energy sources.

10 Second, we support the additions to the SIP approvability
11 criteria that have been included in the proposal. We think that they
12 are going to further assure that states develop plans that actually meet
13 the targets. We also believe that it's reasonable to express regulatory
14 requirements as mass emissions.

15 However, we urge EPA to add a further SIP approvability
16 criteria, which would install automatic provisions for compensation, in
17 the face of a state failing to adhere to its budget.

18 Finally, our third area of comment regards the emissions
19 trading program, and our written comments are going to be much more
20 detailed. I want to highlight two important concepts, though. We have
21 always advocated strong cap and trade programs, and I think that the
22 proposed model rule has many of the concepts in place. We would like to
work a little bit further on it, and we urge EPA to encourage states to
adopt it as much as possible.

We also urge EPA to require states to choose an alternative
program to make a rigorous demonstration that it will achieve the same

1 amount of reductions with the same type of assurance or certainty that a
2 cap and trade program would achieve.

3 Further, if states decide to adopt an alternative program,
4 then it must be consistent with the model rule, or interstate trading
5 should be prohibited.

6 We also support the banking and trading of early reductions,
7 and we're concerned that any source that is wishing to create early
8 reductions become a full-fledged opt-in source of the future trading
9 program. In other words, we would not like to see discreet early
10 reductions be credited in the program.

11 Finally, the news this morning said that today is a Code Red
12 day in Washington, and on the news they urged people who are sick, or
13 elderly, or young to not go outside until the weather breaks, which is
14 sometime next week. I just heard another comment in the car on the way
15 over, which your radiocaster said, last year it took three days of heat
16 for it to get this bad, and now it's one day.

17 I think that underscores the importance of trying to come to
18 a reasonable and practical solution now, and we just want to echo that
19 sentiment in these comments.

20 MR. WILSON: Thank you. Ms. Stanfield.

21 MS. STANFIELD: Thank you. I'm Rebecca Stanfield, and I'm a
22 staff attorney at U.S. Public Interest Research Group, and I'm here
presenting comments today on behalf of U.S. PIRG and the 20-state PIRGs
around the country.

As ongoing medical research increasingly unmaskes the
devastating impacts of NOx emissions on public health and the

1 environment, the need to take effective remedial steps to reduce NOx
2 becomes all the more urgent, rational, equitable, and economical.

3 Our organization is very encouraged by EPA's Section 110
4 finding of significant contribution, and we fully support EPA's
5 conclusion that substantial NOx reductions are necessary to abate
6 non-attainment, particularly in the Northeast, and to protect the
7 sensitive and the healthy from harm done by breathing polluted air.

8 Our members in the Northeast, Southeast, and Midwest,
9 however, have a zero tolerance for a supplemental proposal which waters
10 down key protective measures implicit in the NOx budget. I have two
11 major points I want to make today, and we will also be submitting more
12 detailed comments on a host of issues in the rule.

13 But the two points I want to focus on today are that we will
14 oppose the rule if it includes a fuel-neutral allocation alternative.
15 We believe that in effect this allocation approach subsidizes nuclear
16 power, which is equally and in many ways more dangerous than NOx
17 emissions.

18 A hidden corporate welfare program for the nuclear power
19 industry simply has no place in a world designed to increase public
20 health and safety.

21 My second point is that we will oppose a 15-percent
22 inflation, and the regional NOx budget for utility and industrial
sources. By diluting the cap, which is the key to the success of the
rule, EPA threatens to distort the marketplace, undermine attainment
goals, and waste resources by adopting a rule that is flawed from the
outside.

1 So, again, our comments today will focus entirely on these
2 two issues, and we'll submit detailed written comments on additional key
3 issues.

4 First, EPA should reject the fuel-neutral alternative in
5 favor of an output-based allocation program limited to fossil fuels.
6 Replacing one serious environmental problem with another is not an
7 acceptable solution.

8 If the ultimate goal of the NOx trading program is to reduce
9 hazardous health impacts resulting from power production, adopting the
10 fuel-neutral approach will sabotage this goal.

11 Through the fuel-neutral allocation method, nuclear power
12 plants would be granted emission allowances. As a result, the program
13 would bolster the continued operation of unsafe and expensive nuclear
14 power plants along with their many associated public health and
15 environmental threats.

16 The overwhelming consensus within the environmental
17 community is that nuclear power should be distinguished from other power
18 sources, because it is unique in the creation of thousands of tons of
19 highly irradiated waste and radioactive releases, and the potential for
20 a devastating nuclear accident.

21 The reasons to object to subsidizing the commercial nuclear
22 industry in any environmental policy are abundant. Irradiated nuclear
waste remains toxic for more than a million years. Mere seconds of
exposure to high-level radioactive waste inflicts a lethal dose of
radiation. There is no safe facility to store nuclear waste.

Even if such a facility existed, it would take 100,000

1 shipments of waste over a 30-year period, through as many as 43 states,
2 to transport the current stockpile. Nuclear utilities are economically
3 infeasible, and better economic and environment alternatives are readily
4 available.

5 So this copious list of dismal realities of nuclear power
6 should prompt EPA to adopt a fossil-fuel-based approach better tailored
7 to its goals. We urge EPA to embrace the output-based NOx allowance
8 allocation method limited to fossil fuels.

9 Basing emissions allocations on output has the benefit of
10 providing a more accurate measurement of the actual efficiency of the
11 source. Limiting the program to fossil fuels is an appropriate response
12 to the problem of regional transport of ozone, and that does not come at
13 the unnecessary cost of subsidizing nuclear power.

14 Second, in calculating the utility sector budget, we urge
15 EPA to reconsider its methodology. EPA's approach of basing emission
16 caps on speculative future generation activity for the year 2007
17 contains defects that may undercut both the efficacy of the trading
18 program as well as the attainment objectives.

19 First, current emission rates provide the most accurate and
20 accessible gauge for developing the utility budget. By attempting to
21 project growth rates a decade away in a rapidly changing technological
22 market, EPA is inserting from the onset unnecessary inaccuracy in the
very structure of the rule.

 By failing to account for current and future control
technology that is capable of achieving low-rate emissions from a 1997
baseline, EPA will produce an inflated cap that will destroy the NOx

1 trading market.

2 Additionally, the regional NOx strategy must be designed to
3 achieve attainment of the NOx -- one more sentence -- the purpose of the
4 Section 110 SIP Call will be frustrated by rulemaking if this obvious
5 goal is not incorporated in the designation of the cap.

6 We also believe that EPA should not render moot over two
7 years of hard work on the part of the Northeastern states and its
8 citizens in developing a regional solution to the NOx transport problem
9 by starting with a program that is seriously designed and the
10 methodology of calculating the cap.

11 Thank you for giving me the opportunity to talk.

12 MR. WILSON: Sure. Thank you. It looks like we don't have
13 any questions for you. We appreciate it. Is there anybody else here
14 who wanted to testify and hasn't had a chance?

15 If not, I just want to again thank everybody, not only for
16 coming today, but for those of you who may have adjusted your schedule
17 to come a little earlier. We appreciate it.

18 I think it now allows all of us to finish off the day, and
19 for those of you traveling, you maybe will get home a little sooner.
20 Thank you again for taking the time to come.

21 Again, for the record, the comment period is open until June
22 25th, and comments should come in by then. Everybody's full statement
will be made part of the record, and anybody who has additional comments
or wants to make comments on what you've heard here today, we'd
encourage you to do so, just get them into us by June 25th.

 Again, thanks everybody for coming. Have a good weekend.

(Whereupon, at 1:24 p.m., the hearing was concluded.)

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