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Air Docket No. OAR-2003-0079
Air and Radiation Docket and Information Center
U.S. Environmental Protection Agency
Mailcode 6102T
1200 Pennsylvania Ave., NW
Washington, DC 20460

RE: Phase 2 of the Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard – Notice of Reconsideration

The Ozone Transport Commission (OTC) thanks the U.S. Environmental Protection Agency (EPA) for the opportunity to submit written comments on the above referenced Notice of Reconsideration. These comments will only address EPA's determination that electric generating units (EGUs) that comply with rules implementing the Clean Air Interstate Rule (CAIR) and that are located in States where all required CAIR emissions reductions are achieved from EGUs meet the 8-hour ozone State implementation plan (SIP) requirement for application of reasonably available control technology (RACT) for nitrogen oxide (NOx) emissions. The OTC strongly opposes this determination.

The OTC was created by Congress under the Clean Air Act (CAA) Amendments of 1990 to coordinate ground-level ozone reduction strategies in the Northeast and Mid-Atlantic region of the U.S and to advise EPA on air transport issues. OTC represents 12 states and the District of Columbia.

CAIR Cannot Satisfy the RACT Requirement for EGUs in the 8-Hour SIPs

The most basic principle enunciated throughout the CAA is that attainment of the health-based standards is paramount, and that economic concerns, although important, are secondary to attaining "as expeditiously as practicable." This principle is apparent in the language of section 172(c)(1) which provides that nonattainment

State Implementation Plans (SIPs) "shall provide for the implementation of all reasonably available control measures as expeditiously as practicable (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology) and shall provide for attainment of the national primary ambient air quality standards."

The legislative structure of the CAA and the location of section 172 within the Act further emphasize the importance Congress attaches to the attainment of the standards. Section 172 is included in Part D entitled "Plan Requirements for Nonattainment Areas" and Subpart 1 entitled "Nonattainment Areas in General." The section 172 requirements are intended as the foundation for all attainment plans, no matter the pollutant. Indeed, the titles of Subparts 2-5 in part D all start with the phrase "Additional Provisions…" to the basic provisions of Subpart 1. Thus, Congress intended that, through the RACT provision in section 172(c), that a reasonable of pollution control technology needs to be installed on major sources in all nonattainment areas (and Statewide within the Ozone Transport Region (OTR) for NOx).

This premise of the RACT provision, that those major stationary sources of ozone precursors that are located in nonattainment areas (and Statewide within the OTR) must have a reasonable level of control, is only common sense. From an equity standpoint, it only makes sense that those sources having the greatest impact should "do their part" and contribute to attainment of the air quality standard in the nonattainment area or the OTR state in which they are located. The flip side of this argument is that no major source should be allowed to escape that level of control that the State deems to be technologically and economically reasonable.

As we submit these comments, it is nearly seventeen years after the passage of the 1990 Clean Air Act Amendments. Given the health impacts, increased mortality, and extensive costs of air pollution on scores of millions of people throughout the OTR and beyond, it is unconscionable that major EGU sources affecting nonattainment areas (let alone sources actually in non-attainment areas), could continue to avoid installing even a reasonable level of control technology on their facilities.

EPA's determination that exempts CAIR EGUs from State RACT submissions would allow this possibility of no pollution controls on the largest emissions sources in

nonattainment areas or in OTR States. CAIR is a cap and trade program which cannot guarantee that even a reasonable level of control will be installed where is most needed, as sources have the option to buy allowances instead of installing controls. Also, CAIR, a cap and trade program, is not a "control technology" in any sense as intended by section 172(c).

Unfortunately, EPA goes even further and attempts to stretch the section 172(c) definition of "reasonable," when it states that "EPA believes that the term 'reasonable' in RACT may be construed to allow consideration of the air quality impact of required emissions reductions from a region-wide cap and trade program such as CAIR." (71 FR 75909/2) Again, 172(c) looks to achieve emissions reductions in the nonattainment area or OTR state through the installation of real, working pollution control technologies - reductions that cannot be guaranteed by a regional cap and trade program - while CAIR's purpose is to reduce interstate transport through the reduction of only "highly cost-effective" emissions primarily from the EGU sector. Throughout the CAIR process, EPA has made it very clear that CAIR is not intended as an attainment strategy. Implying a nexus between CAIR and RACT is not supportable.

EPA Must Expand the Concept of RACT for NOx Beyond Combustion Controls

The OTC would like to take this opportunity to provide further insight on an EGU RACT-related issue that is very important to the OTR States and their 8-hour ozone attainment efforts. The issue is that RACT is not a static concept rooted in 1990s technology. RACT, as the acronym implies, is a technology-based program that evolves over time as control technologies develop with lower control costs.

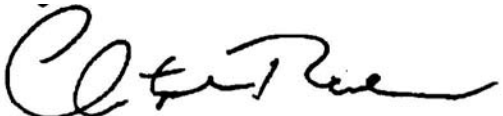
The term RACT is not defined in the CAA. In 1979, EPA defined RACT as "the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering the technological and economic feasibility. (44 FR 53762) Therefore, this early definition of "reasonably available" has both technological and economic feasibility components. The technological feasibility component does not, however, refer to the feasibility of *installing* the technology within a certain timeframe, rather it means that the technology is *available* to be installed, i.e., the technology is not under development and it is both proven and widespread.

EPA further clarified its RACT definition in 1992 in the NOx Supplement to the General Preamble. (57 FR 55620-55629). Specifically, EPA stated that "In general, EPA considers RACT for utilities to be the most effective level of combustion modification reasonably available to an individual unit. This implies low NOx burners, in some cases with overfire air …." (57 FR 55625/2) Earlier in the same document, EPA determined that "…in the majority of cases, RACT will result in an overall level of control equivalent to the following maximum allowable emission rates [pounds of NOx per million Btu] for utility boilers: (a) 0.45 for tangentially fired, coal burning; (b) 0.50 for dry bottom wall fired coal burning…." (70 FR 55625/1) The OTC contends that tying presumptive RACT to emission rates for combustion modifications is an outmoded concept that should not apply today for the OTR States that have already gone through one round of RACT for their 1-hour attainment strategies.

OTC's overall contention, then, is that RACT for NOx for EGUs for 8-hour ozone attainment should now be post-combustion controls such as SNCR or SCR. SNCR and SCR are both "reasonable" and "available" air pollution control technologies which are proven in practice and widespread in application with nearly 100 gigawatts of equipment already installed. We find ample support for costs in the order of $4500/ton which is more than adequate to support SCR on EVERY large EGU facility and SNCR on smaller, older EGUs. The OTR states are implementing controls costing this level of investment in many other sectors as "reasonable," and the EGU sector can still make "reasonably cost effective" emission reductions up to the $4500/ ton threshold.

The OTC again thanks EPA for the opportunity to submit its comments on this very important reconsideration.

Testimony respectfully submitted,



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