

***Appalachian Mountain Club • Chesapeake Bay Foundation  
Chesapeake Climate Action Network • Clean Air Task Force  
Clean Energy Partnership • Conservation Law Foundation  
Environment Maryland Research & Policy Center • Environment Northeast  
National Environmental Trust • National Parks Conservation Association  
Natural Resources Defense Council • PennFuture  
Southern Environmental Law Center***

October 13, 2006

Christopher Recchia  
Executive Director  
Ozone Transport Commission  
444 North Capitol St., NW Suite 638  
Washington, DC 20001

Re: Comments on Draft Summary of Regulatory Options to Implement  
Additional EGU Reductions Beyond CAIR Budgets (July 31, 2006)

Dear Mr. Recchia:

The undersigned organizations appreciate the opportunity to comment once again<sup>1</sup> on the OTC's proposed control measures for Electric Generating Units (EGUs) to achieve emission reductions beyond the Clean Air Interstate Rule, i.e., CAIR Plus. Many of our organizations are actively engaged in national, regional, state, and local efforts to reduce harmful air pollution from fossil fuel-fired power plants and other sources, and have tens of thousands of members who live, work, and recreate in the OTC states that are impacted by that pollution. Power plants have been and continue to be one of the largest sources of nitrogen oxide (NO<sub>x</sub>) emissions in the OTC region, as well as the *single largest* emitter of sulfur dioxide (SO<sub>2</sub>). These pollutants, harmful in their own right, react in the atmosphere to form other unhealthful secondary pollutants such as ground-level ozone and fine particulate matter (PM).

As EPA confirmed in its rulemaking on CAIR, power plant emissions are responsible for thousands of unnecessary deaths, billions of dollars in human health and environmental costs each year, and reduced visibility in our national parks and forests.<sup>2</sup> Unfortunately, the power plant reductions required by EPA in CAIR are too little, too late—both to protect the environment and the health of the millions of people living in the OTC region, and to give OTC states a reasonable, cost-effective chance at reaching attainment of the health-based National Ambient Air Quality Standards (NAAQS) for ozone and PM. By the EPA's own analysis, many counties in the Mid-Atlantic region will still not be attaining NAAQS for ozone under CAIR. Furthermore, it is important to note that ambient

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<sup>1</sup> See the letter of March 31, 2006, from many of these same signatories.

<sup>2</sup> See, e.g., CAIR, 70 Fed. Reg. at 25168-170, 25305-13; EPA, *Regulatory Impact Analysis for the Final Clean Air Interstate Rule*, EPA-452/R-05-002, March 2005. See also, CATF/Clear the Air, *Dirty Air, Dirty Power: Mortality and Health Damage Due to Air Pollution from Power Plants*, June 2004, [http://www.catf.us/publications/reports/Dirty\\_Air\\_Dirty\\_Power.php](http://www.catf.us/publications/reports/Dirty_Air_Dirty_Power.php).

levels of both ozone and PM below the current NAAQS continue to produce adverse human health impacts, as there is no known threshold for these impacts.<sup>3</sup> Because CAIR is inadequate in key respects, we strongly support the OTC's proposal to build on CAIR reductions and require additional reductions of NO<sub>x</sub> and SO<sub>2</sub> emissions from power plants. In addition, because the Clean Air Mercury Rule (CAMR) is seriously flawed as well, the OTC states must also take further action to require additional reductions of power plant mercury emissions.<sup>4</sup>

We continue to recommend that the OTC move forward with consideration and approval of a CAIR Plus model rule. We are encouraged by continuing dialogue with states outside the OTC region, known as the "State Collaborative." However, we believe that **the OTC should proceed with its model rule for EGUs in time for states to meet their CAIR submittal deadlines, whether or not an agreement can be reached with upwind jurisdictions on a super-regional CAIR Plus.** We also believe that each OTC state should require power plants within its jurisdiction to reduce SO<sub>2</sub> and NO<sub>x</sub> emissions to the level targeted by the model rule.

With regard to the above-captioned draft model rule, we offer the following comments:

**1. Scope of CAIR Plus.** The OTC has been on record in support of a multi-pollutant control strategy for EGUs since early 2003. However, while previous versions of the OTC's EGU strategy papers and public presentations included mercury reductions, the current draft model rule does not. Furthermore, various power sector stakeholders have registered complaints about the inclusion of SO<sub>2</sub> and even annual NO<sub>x</sub> limitations in any beyond CAIR strategy. The benefits to be achieved by a true multipollutant strategy – for public health, power system planning, water quality, and regulatory efficiency – have not changed. Indeed, recent health effects data warrant greater efforts toward power sector clean-up, not less.<sup>5</sup> We urge that there be no backsliding on the OTC's commitment to a multipollutant approach to EGUs, and recommend that the final model rule should address SO<sub>2</sub>, NO<sub>x</sub>, and mercury.

**2. SO<sub>2</sub> program design.** We support the State Retirement Account Option which builds upon the existing federal Title IV Acid Rain Program allowances. We agree that retiring additional Title IV allowances to achieve SO<sub>2</sub> reductions beyond CAIR is more efficient than establishing new and separate state-issued SO<sub>2</sub> allowances to be managed outside of Title IV. This approach will also allow non-CAIR SO<sub>2</sub> states in the region to participate, and does not require any active administration by EPA.

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<sup>3</sup> In fact, EPA's Clean Air Scientific Advisory Committee (CASAC) has expressed "serious scientific concern" that EPA's recently announced new PM standards are not adequately protective of public health, and that there is "clear and convincing scientific evidence that significant adverse human-health effects occur in response to short-term and chronic particulate matter exposures at and below 15  $\mu\text{g}/\text{m}^3$ , the level of the current annual PM<sub>2.5</sub> standard." See CASAC letter to EPA Administrator Johnson dated September 29, 2006, EPA-CASSC-LTR-06-003.

<sup>4</sup> The inadequacies of CAMR are documented in the legal briefs of states -- including a majority of the OTC states -- that have filed suit against EPA's action on CAMR.

<sup>5</sup> CASAC, Johnson letter. CASAC has recommended that the current ozone NAAQS be strengthened, and any future tightening of the ozone and PM NAAQS will likely produce additional nonattainment areas.

One power sector stakeholder has asserted that this approach will impose a competitive disadvantage on newer, cleaner units that currently receive reduced allowance allocations (or no allowance allocations at all) under Title IV.<sup>6</sup> However, this perceived disadvantage is an artifact of the federal allocation scheme, not of the OTC's effort to achieve beyond-CAIR emission reductions. One possible approach to temper the effect of the model rule on such EGUs would be to deduct some specified level of annual SO<sub>2</sub> emissions, e.g., 500 tons, from each plant's CAIR Plus allowance surrender requirement. The surrender ratio applicable to the remaining emissions of all covered EGUs could then be adjusted to achieve the desired level of overall emission reduction.

**3. NO<sub>x</sub> program design.** We support a CAIR Plus program covering both ozone season emissions and annual NO<sub>x</sub> limitations. In addition to reducing their contribution to PM levels in the region, annual NO<sub>x</sub> reductions beyond CAIR will help achieve the total nitrogen (TN) load reduction commitments made in the Chesapeake 2000 Agreement. Five OTC states, the District of Columbia, and the EPA have agreed to reduce nitrogen loads to the Chesapeake Bay from all sources – including air pollution -- by approximately 110 million pounds from 2000 levels. CAIR Plus, if properly implemented, would provide additional nitrogen load reduction benefits to the Bay and its tributaries and may help offset some of the loads the states committed to achieving through land-based practices. In particular, New York and Pennsylvania will achieve major benefits from regional reductions in airborne nitrogen deposition, because EPA preliminary modeling suggest a greater reduction in TN delivered loads from these jurisdictions as a result of reducing NO<sub>x</sub> emissions from the region's EGUs.<sup>7</sup>

Additionally, we support the reservation of NO<sub>x</sub> allowances to a state attainment reserve account. If the OTC states can come to a timely decision for apportioning the targeted emission reductions beyond CAIR, then allowing state-specific tonnage reductions would be appropriate. If not, a region-wide percentage reduction beyond CAIR would also be acceptable.

States have broad flexibility to design their NO<sub>x</sub> allocation systems. In particular, we support three program features that EPA has already specified<sup>8</sup> as available to the states:

- output-based allocations, rather than allocations based on heat input, to encourage more efficient operations of EGUs;
- distribution of allowances by auction, rather than free distribution;
- creation of allowance set-asides for energy efficiency and renewable energy (EE/RE) projects.

Indeed, all three of these program features can support expanded deployment of EE/RE projects. Output-based allocations will provide allowances directly to specified types of non-emitting generators. Allowance auctions will provide a revenue stream that states can use to support new EE/RE investment, which in turn returns the value of the allowances to

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<sup>6</sup> Mark Buzel, AES, September 19, 2006.

<sup>7</sup> First Round of Phase 5 Watershed Model Scoping Runs. June 7, 2006. Presentation by Gary Shenk, EPA Chesapeake Bay Program to the Water Quality Steering Committee.

<sup>8</sup> See STAPPA/ALAPCO, *Alternative NO<sub>x</sub> Allowance Allocation Language for the Clean Air Interstate Rule*, August 2005, pp. 1-2.

ratepayers through EE/RE benefits. Set-asides also provide vendible allowances to EE/RE projects, and should be streamlined enough to ensure that the costs of application and qualification do not discourage participation. It should also be noted that expanded deployment of EE/RE resources is key to the reduction of peaking unit emissions on high electricity demand days.<sup>9</sup>

The OTC should build upon the model language available through STAPPA/ALAPCO and provide an integrated NO<sub>x</sub> program design including the elements listed above in the final OTC model rule.

**4. Targeted emission reductions.** The draft model rule options document includes space holder reduction values of 25% and 40% for Phase I and Phase II respectively. While we recognize that additional modeling remains to be completed before the specific targets are proposed, we note that these reductions appear to be of a similar order of magnitude as the reductions considered in previous draft CAIR Plus proposals. We believe that reductions of this magnitude (reductions from 2002 levels of 69% for NO<sub>x</sub> by 2012 and 86% for SO<sub>2</sub>) are critical to protect the public health and environment in the OTC. Not only will the incremental benefits of additional EGU emissions reductions vastly exceed the incremental costs, but EGU reductions will also be cost-effective when compared to other potential emission reduction measures. Earlier this year, the OTC produced a summary of all reasonable control measures currently under consideration (“Status Summary for OTC Reasonable Control Measures Analysis”); costs were estimated for many of these measures, and the costs of EGU measures beyond CAIR are well within the range of estimated control costs for other listed sectors.

We look forward to the opportunity to comment on the specific emission reduction targets for CAIR Plus in the weeks ahead.

For the above reasons, we urge the OTC to finalize and approve a true multipollutant CAIR Plus model rule for EGUs as soon as possible.

Respectfully submitted,



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On behalf of:

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<sup>9</sup> See A. Diem, USEPA, *Analysis of NO<sub>x</sub> Emission Reduction Potential from Demand Side Resources*, September 15, 2006.

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