

Testimony of

**Ken Colburn
Director, New Hampshire Division of Air Resources**

on behalf of the

**State and Territorial Air Pollution Program Administrators (STAPPA)
and the
Association of Local Air Pollution Control Officials (ALAPCO)**

on H.R. 1647, the “Electricity Emergency Relief Act”

before the

**House Energy and Commerce
Subcommittee on Energy and Air Quality**

May 3, 2001

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Good morning, Mr. Chairman and members of the Subcommittee. I am Ken Colburn, Director of New Hampshire’s Division of Air Resources, and I am testifying today on behalf of the State and Territorial Air Pollution Program Administrators (STAPPA) and the Association of Local Air Pollution Control Officials (ALAPCO). Thank you for this opportunity to provide you with our thoughts regarding H.R. 1647, the “Electricity Emergency Relief Act.”

STAPPA and ALAPCO are the national associations representing air quality officials in 54 states and territories and over 165 major metropolitan areas throughout the country. The members of STAPPA and ALAPCO have primary responsibility under the Clean Air Act for implementing our nation’s air pollution control laws and regulations. Accordingly, we are especially interested in the air quality-related provisions contained in the “Electricity Emergency Relief Act” and we would like to offer our perspectives on this legislation and the circumstances leading up to it. Our message, in brief, is that we do not believe the air quality-related provisions of this legislation are warranted.

STAPPA and ALAPCO appreciate the Subcommittee’s concern over California’s electricity emergency and the potential for such emergencies to arise elsewhere around the country, and we commend your efforts to explore means that will allow states to prevent and, when necessary, respond to such emergencies. We share this concern and, for that reason, have examined this issue to determine whether or not the Clean Air Act might have played a role in causing electricity shortages. We have concluded with confidence that the Clean Air Act and related air pollution control programs and requirements bear no responsibility for the electricity shortage facing California. In fact, it is clear that neither the Clean Air Act nor related programs and requirements are interfering with the permitting and construction of ample new power generation in California or other parts of the country or the operation of existing electric generation units. Quite to the contrary, it is evident that under the current Clean Air Act and existing state and federal authorities, construction of new electricity generation capacity is currently thriving.

Although California had not constructed a new, major power plant in approximately two decades, during the past two years, the California Energy Commission (CEC) has approved 13

power plant projects with a capacity totaling 8,400 megawatts (MW); six of these are currently under construction. Moreover, the CEC is considering 15 additional projects with a capacity of 6,700 MW, and is expecting 12 more projects comprising 8,000 MW to be filed this year. Finally, the state is expecting to bring an additional 2,000 MW of peaking projects on line this summer.

Nine Central states have also witnessed a recent boon in power generation. These states, including Nebraska, Iowa, Minnesota, Kansas, Missouri, Arkansas, Louisiana, Texas and Oklahoma, have recently constructed and/or permitted over 70,000 MW. This includes over 36,000 MW in Texas and 15,000 MW in Louisiana.

In New England, permits have been issued for more than 7,000 MW of new combined-cycle gas turbine capacity, a substantial portion of which is already under construction. This total represents an approximate 25-percent expansion of New England's existing capacity base. Meanwhile, according to the most recent power plant inventory data collected by the federal Energy Information Administration, self-reported industry plans for future capacity additions are even more ambitious, totaling nearly 12,000 MW in New England, 4,000 MW in New York and 14,000 MW in the Pennsylvania-New Jersey-Maryland power-pool area.

Other regions of the country are reporting similar growth trends in electricity generation.

With new generation now surging throughout the country, even in heavily regulated ozone nonattainment areas, it is clear that the energy problems that have reached crisis proportions in California, and may also arise in other areas of the country, are not attributable to air pollution control limitations. In California, for example, it is apparent that many factors are responsible, such as the approach taken to utility deregulation, increasing electricity demand during a period of strong economic growth, inadequate transmission capacity, insufficient capability to perceive and respond to fluctuating demand, and substantially reduced energy conservation. In the context of an aging power generation and transmission infrastructure, these factors have created a situation where peak power demands exceed the available supply.

The energy crisis has put to the test statutory provisions designed by Congress expressly for the purpose of addressing such emergency situations. We congratulate you and your colleagues in the 101st Congress for including such effective provisions under Section 110(f) of the Clean Air Act Amendments of 1990. As has been successfully demonstrated in California, notwithstanding the cause of the energy shortage, existing federal provisions, combined with existing state authorities, provide Governors across the country with tremendous flexibility to act swiftly in a time of crisis to take timely and appropriate action best suited to each state's particular needs.

Through a series of administrative orders, California is able to allow temporary delays in the toughest NO_x control requirements (Lowest Achievable Emissions Rate) for new generation sources, but during the delay places a cap of 25 parts per million (ppm) on emissions; such delays are granted with the express understanding that sources will comply with a 5-ppm emissions limit no later than one year after a waiver is granted. For existing central generation sources, the state allows for temporary increases in emissions associated with increased

generation by sources with emissions limits that cap hours of operation, provided the sources pay mitigation fees to the local area in which the emissions increases occur. These fees are intended to be used to reduce NO_x from sources that would not otherwise be controlled. These provisions are authorized by state law (California Health and Safety Code Section 42451) and federal law (Clean Air Act Section 113).

Likewise, other states have also demonstrated that emergency capacity shortages can be successfully addressed by using existing authorities. In Connecticut, for example, over 3,000 MW of nuclear capacity were affected in April 1996 by a Nuclear Regulatory Commission decision that nuclear units could not operate until safety concerns were addressed. This generation, which represented half of Connecticut's in-state capacity, was precluded from operating for over a year – a period that included two summer seasons, which are periods of peak demand in the Northeast. However, replacement capacity was generated through several measures, including quickly bringing in new generation, signing up utility customers to generate their own power and increasing energy conservation efforts (which represented approximately 300 MW around New England on peak days). Although the Connecticut Assembly approved emergency legislation to allow the state's Department of Environmental Protection to waive the 30- to 60-day public comment period for permit issuance, no other environmental requirements were suspended.

STAPPA and ALAPCO firmly believe that Governors must be allowed the broadest discretion possible to respond quickly and effectively to emergencies within their respective jurisdictions. The above examples illustrate that existing federal and state authorities can be used to resolve energy issues in a way that provides maximum flexibility to Governors to tailor solutions to their own unique needs. The air quality-related provisions contained in the "Electricity Emergency Relief Act" are premised on the notion that air pollution control requirements are causing electricity emergencies. However, as we have established, such requirements are not responsible for the problem and, therefore, the tools provided in this bill will not help states address electricity emergencies. Further, we are concerned that these provisions could, unintentionally, exacerbate air quality problems, including interstate transport of air pollution. Accordingly, we offer the following comments on Sections 303 and 305 of the legislation.

With respect to Section 303, which addresses "NO_x Preconstruction Requirements for New Generation," STAPPA and ALAPCO offer the following observations. First, this section of the bill would allow waivers of all preconstruction and New Source Performance Standards (NSPS) requirements for new generation sources for up to one year, thus not only allowing these sources to operate with no pollution controls, but to do so without offsetting excess emissions or paying any mitigation fees. Second, it does not require compliance with waived requirements until the waiver expires, irrespective of whether or not that amount of time is necessary. Third, it postpones the determination of what pollution control limits will ultimately be required until after the waiver expires, which could lead to decisions that are less effective in terms of pollution control, cost and rate recovery. Fourth, allowing new generation sources in an area experiencing an electricity emergency to go totally uncontrolled for up to one year (and to allow the granting of such waivers to take place for a period of up to two years) poses significant issues related to transported air pollution. The increased emissions could not only exacerbate air quality and

public health problems in downwind areas, they could also jeopardize the ability of states and localities to meet their clean air goals, including attainment and maintenance of health-based air quality standards and the protection of pristine “Class I” areas. Increased emissions could also lead to the imposition of economic development sanctions under the federal Clean Air Act or force areas to impose additional control requirements on sources within the downwind area in order to mitigate the additional pollution coming from upwind.

With respect to Section 305, which addresses “Emergency Generation,” STAPPA and ALAPCO offer the following observations. Section 305(c), which addresses “NO_x Waiver Authority for Natural Gas-Fired Generation,” would allow waivers of all NO_x emission limits for affected sources. Although the bill prohibits sources from disconnecting or ceasing use of emission control devices, it does not preclude relaxation of air pollution emission limits, nor does it preclude sources from increasing emissions by “throttling back” on their control devices. In addition, it appears that although waivers may not extend for more than six consecutive months during a two-year electricity emergency, nothing would preclude the granting of multiple waivers to a particular source, with one-month breaks between each.

Section 305(d), which applies to “Emergency Generation for Private Use,” is even more problematic in that it would apply to any type of generator operating on any type of fuel, no matter how dirty. Under this subsection, waivers of all air pollution control requirements (even those unrelated to power generation) are allowed for all air pollutants, including toxic air pollutants. While net increases in air pollution are prohibited, the required offsets may occur anywhere in an undefined “air quality region”; this raises serious concerns regarding the potential for localized air quality impacts, as well as concerns related to transported pollution. In addition, as in Section 305(c), although disconnecting or ceasing use of emission control devices is not allowed, emission limits can be relaxed or sources can “throttle back” on the control devices. Further, unlike Section 303 and Section 305(c), applicability of this subsection is not limited to a two-year period; it also appears that a source may be able to obtain multiple, successive six-month waivers. Neither Section 305(c) nor 305(d) calls for the payment of any mitigation fees by sources taking advantage of the opportunity for waivers.

In summary, the Clean Air Act and related air pollution control programs are not responsible for the electricity crisis occurring in California. Accordingly, the air quality-related tools in the “Electricity Emergency Relief Act” will not help states address electricity emergencies. Further, we are concerned that these provisions could, unintentionally, exacerbate air quality problems, including interstate transport of air pollution. Finally, existing federal and state authorities already provide states with broad flexibility to act quickly in a time of crisis and take timely and appropriate action best suited to their particular energy needs.

Once again, we commend you for your interest in this extremely important issue and thank you for providing us with this opportunity to testify. I would be happy to answer any questions at this time.