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Hearing On
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Mr. Chairman, Members of the Subcommittee, thank you for the opportunity to testify today. My name is Randy LaBauve, and I am the Vice President of Environmental Services for Florida Power & Light Company, testifying on behalf of FPL Group.

FPL Group is a leading clean energy company with approximately 39,000 megawatts of generating capacity and more than 15,000 employees in 27 states and Canada. FPL Group's principal subsidiaries are NextEra Energy Resources, the largest generator of renewable energy from the wind and sun in North America, and Florida Power & Light Company, which serves 4.5 million customer accounts in Florida and is one of the largest regulated electric utilities in the country.

Today, the electric energy sector is at an environmental crossroads. While some companies, like FPL Group, have transitioned to the no- and low-emissions generations technologies of the future, other companies are stalled in an untenable past. As such, the environmental decisions that the Congress and the agencies make will dictate billions of dollars worth of future decisions, and perhaps more importantly, these decisions also stand to reward and/or punish companies for the actions that they may or may not have taken.

When CAIR was promulgated, its legality was challenged by numerous companies, including FPL Group, and various states. The DC Circuit Court decided in July 2008 that CAIR was "fundamentally flawed" and EPA was directed to rewrite the rule.

The Court found many flaws in the rule, including three which we believe are significant to future EPA regulations. First, the Court found that the proposed emissions trading program would not necessarily bring all areas

into attainment as required by Section 110 of the Clean Air Act. Secondly, the Court ruled that EPA had no authority to terminate or limit sulfur dioxide emissions allowances under Title IV of the Clean Air Act. Finally, upholding FPL Group's challenge, the Court ruled that EPA had unlawfully acted "beyond the bounds of its statutory authority" by utilizing fuel adjustment factors to reallocate NOx allowances from cleaner generation to those utilizing coal-fired generation.

Unfortunately, the issues the Court identified will not be easily remedied by EPA. Without significant revisions to the Clean Air Act, the EPA likely cannot rewrite CAIR to include the currently proposed program measures. This may leave EPA little choice, but to develop a draconian command and control rule that would be extremely costly, and would certainly lead to further litigation. Therefore, it is now incumbent on the Congress to act and provide EPA clear legislative direction to develop effective and equitable rules.

Since the Court's ruling, there have been several calls for a quick fix to codify the existing CAIR proposal. However, such an overly simplistic, rushed effort to avoid the Court's decision simply isn't practicable. Codifying CAIR will not address the growing complexity of rules that are staged to affect electric generating facilities and will not provide a comprehensive solution to all the confusing and overlapping regulations that will result in additional litigation, create economic uncertainty and affect future electric generating reliability. In other words, inaction isn't a choice.

But, instead of a rushed and incomplete half measure, Congress should take on the task and enact a comprehensive national policy that addresses the various emissions reduction programs currently being developed by EPA. We *need* Congress to develop a comprehensive three-pollutant bill that provides protective and reasonably attainable reductions of SO2 and NOx emissions, incorporates the regulation of mercury and other hazardous air pollutants and corrects the flaws in CAIR. Without legislation, EPA's current patchwork of Clean Air Act and court decision driven rule development will continue to be a stifling burden to reducing emissions and achieving industry compliance.

The legislation should establish an efficiency-based cap and trade program to distribute emissions allowances, without inequitable fuel adjustment factors, initially utilizing free allocations of a percentage of the allowances; and then transitioning to a 100% auction of allowances. The legislation

should also include direction and authority for EPA to utilize a market-based trading program that will reduce the downwind impacts of emissions to non-attainment areas and include assurances that attainment standards will be met.

FPL Group believes that only Congress can effectively address the confusing and incomplete patchwork of onerous air emissions regulations that are stifling the decision processes for upgrading, maintaining, repowering and building new power plants. As such, we commend the Chairman for taking on this issue and stand ready to work with this Subcommittee to pass a comprehensive three-pollutant bill that will provide the certainty necessary to reduce pollution and advance our nation's energy policy.

Thank you.