Good morning. My name is Robert Manning, and I am an attorney with Hopping Green and Sams, an environmental law firm in Tallahassee, Florida. I serve as counsel to the Florida Electric Power Coordinating Group on air regulatory matters, and today I am providing comments on EPA’s proposals on the FCG’s behalf. The 29 members of the FCG generate nearly all of the power for Florida’s nearly 20 million residents. The FCG will be submitting more extensive and detailed written comments by the deadline.

As an initial matter, Florida utilities have made substantial progress over the last decade in reducing CO2. Specifically, we have reduced the lb/MWh by nearly 20 percent since 2005, and the tons per year by about 12 percent, all while increasing the overall generation by 12 percent.

The FCG is concerned that EPA is not providing sufficient time to review and comment on its proposals, which are comprised of two major components – one for existing utility units and one for reconstructed and modified units. Although EPA has provided 120 days, the complexity of the proposal and the current lack of supporting documentation that EPA has provided result in the need for additional time in which to evaluate the proposals and develop meaningful comments. Evaluation of the proposed emission rate goals for Florida and their “building block” components requires an extensive analysis of the state’s generation and transmission systems and their associated capabilities and limitations. A thorough review of EPA’s analysis (when the information becomes available) requires months rather than weeks. Accordingly, the FCG requests that EPA provide an additional 90 days in which to evaluate and comment on the proposals.
The FCG has numerous legal, regulatory, and technical concerns regarding EPA’s proposals. Today I will briefly highlight several of them, particularly as they relate to Florida.

The proposed section 111(d) proposal is complex, difficult to understand, difficult to analyze, and it will be difficult to implement if finalized in anything like its current form. In the proposal, EPA is asserting new, undetermined authority to dictate how generation is dispatched, the amount of renewable resources to be built, and demand-side management of electricity use. These guidelines and the subsequent state-developed standards for stationary sources under section 111 should begin and end with the regulated source itself. An NSPS or existing source guideline must apply to individual sources, must be based on reductions that an individual source can achieve, and must be based on the use of a system that is incorporated into the design of the source. Of the four “building blocks” EPA proposes as part of a “system of emission reduction” under its “Option 1” approach, only the first can be applied by individual sources subject to the proposal. The other three measures are out of the control of any particular regulated source and are predicated on actions by others. This is inconsistent with EPA’s obligations under the CAA.

Further, if a state does not submit an “approvable” plan, EPA has no authority to promulgate a federal plan that includes the measures it would require of states. EPA cannot develop and impose a federally-enforceable, energy-resource development and dispatch program upon a particular state or group of states.

The FCG is also very concerned with EPA’s use of the 2012 baseline year. EPA proposes to require Florida utilities to reduce their average CO₂ emission rate by an additional 38 percent from 2012 to 2030, and provides no consideration for the substantial reductions already achieved. EPA fails to consider this progress and instead is proposing an additional draconian reduction in emissions that likely cannot be achieved. In fact, EPA set the 2020 to 2029 10-year average interim goal at a level that requires emissions to decrease dramatically in only the next few years, making it perhaps more aggressive than the 2030 goal.
Regarding state implementation of the guidelines, the “flexibility” EPA touts is an illusion: EPA set each state’s goal assuming that each state completely adopts all four building blocks. For Florida, we are concerned that each Building Block is unachievable, meaning that there is no margin to make-up under one Building Block the amount to which we fall short on another. Absent this ability, Florida cannot meet EPA’s proposed goal. Also, if EPA issues a federal plan to a state, since it lacks the legal authority to implement at least Building Blocks 2-4, EPA’s proposed state goal would be unachievable under this scenario as well.

Aside from the legal and regulatory issues associated with the four building blocks, there are serious technical and practical issues regarding their implementation and achievability.

The 6 percent heat rate improvement contained in Building Block 1 is unachievable. In order to produce electricity as efficiently, reliably, and cost-effectively as possible, utilities have already undertaken measures to optimize the efficiency of their units in order reduce operating costs and rate impacts to customers. In addition, EPA’s analysis for Florida predicts the shutdown of nearly all coal-fired generation in the state, making any heat rate improvements for those units moot.

The 70 percent capacity factor goal for the use of natural gas-fired combined-cycle units in Building Block 2 is unreasonable. It is not just the type of unit and the fuel it uses that are important – it is also the location of each unit with respect to electric grid support and whether the transmission system can accommodate significant shifts in unit dispatch order and extent. And fuel flexibility is particularly important for Florida, given our peninsular geography and susceptibility to hurricanes and the accompanying power outages and potential for fuel curtailments. EPA failed to consider these critical factors in its analysis.

Regarding Build Block 3, EPA’s proposal assumes a five-fold increase in renewable generation for Florida between 2012 and 2030. Florida has already increased its renewable generation since 2005 from about 33 to nearly 3000 GWhs. And we must remember that renewable
resources are intermittent and often unreliable, and conventional generation resources must be maintained and operated in order to fill the gaps left when the sun isn’t shining and the wind isn’t blowing.

In Building Block 4, EPA expects Florida utilities to increase demand-side energy efficiency by 1.5 percent per year. Sustaining this goal is unprecedented. For over 30 years, Florida utilities have implemented aggressive demand-side programs, reducing electricity use and avoiding the construction of additional generating units. Through promotion of energy-saving measures, rebates, and the savings that are being obtained due to more stringent federal and state standards for appliances and building construction, most of our customers have long-since implemented and benefitted from increased efficiency. Because of the improvements already made, the achievable additional increase in demand-side energy efficiency is much less than 1 percent per year. In addition, adoption of these measures ultimately is up to the customer, and neither EPA, state agencies, nor utilities can mandate or force energy efficiency measures to be implemented.

Finally, I would like to comment on EPA’s use of net rather than gross electricity generation as a basis for the emission rate goals in the proposal. Use of net generation penalizes utilities for the electricity that is used to power pollution control systems that are, in fact, mandated by other federal environmental regulations. In addition, EPA’s proposed new source CO\textsubscript{2} standards under section 111(b) are based on gross generation. For consistency, gross generation should also be used for the section 111(d) standards.

In sum, Florida utilities have substantially decreased CO\textsubscript{2} emissions over the last decade. EPA’s current proposals to mandate further reductions are unreasonable and unlawful. Thank you for your consideration of the FCG’s comments.