

US EPA ARCHIVE DOCUMENT

6/3/04

PROPOSED SUPPLEMENT TO THE  
CLEAN AIR INTERSTATE RULE  
PUBLIC HEARINGS

3 JUNE 2004

---

BEFORE: Sam Napolitano, U.S. EPA  
Joe Paisie, U.S. EPA  
Sarah Dunham, U.S. EPA  
Howard Hoffman, Esq., U.S. EPA

---

Held at: Holiday Inn Select - Old Town  
480 King Street  
Alexandria, Virginia  
June 3, 2004  
Reported by: Susanne M. Newman,  
Court Reporter

6/3/04

US EPA ARCHIVE DOCUMENT

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

I N D E X

<u>SPEAKER</u>	<u>PAGE NO.</u>	<u>DOCUMENT NO.</u>
Conrad Schneider Clean Air Task Force	9	1
John Kinsman Edison Electric Institute	17	2
Michael J. Bradley Clean Energy Group	27	3
Rayburn L. Butts Florida Power & Light Company	32	4
Christopher Recchia Ozone Transport Commission	35	5
Bernard C. Melewski Adirondack Council	43	6
Jeffrey R. Loveng FirstEnergy Corporation	49	7

6/3/04

US EPA ARCHIVE DOCUMENT

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

I N D E X

<u>SPEAKER</u>	<u>PAGE NO.</u>	<u>DOCUMENT NO.</u>
Michael L. Marvin Business Council for Sustainable Energy	53	8
Yvonne McIntyre Calpine Corporation	57	9
James C. Moore II	63	---
Kris W. Knudsen Duke Energy	70	10

6/3/04

## 1 P R O C E E D I N G S

2 MR. NAPOLITANO: Good morning. We are going to  
3 go ahead and start the hearing now. Lead off by  
4 thanking you for coming to EPA's hearing on the  
5 recently proposed limitations for SO<sub>2</sub> and NO<sub>x</sub> in the  
6 supplemental notice for the Clean Air Interstate Rule.

7 My name is Sam Napolitano. I will be chairing  
8 today's meeting. We'll listen to what you have to say  
9 to us about the rule, and I'd like to initially  
10 introduce other members of the panel.

11 To the far right of me is Joe Paisie, who is  
12 with the Office of Air Quality Planning and Standards,  
13 who works extensively on fine particle attainment  
14 issues, regional haze, and other NAAQS-related issues.

15 We have Sarah Dunham, who's with the Office of  
16 Atmospheric Programs of the Air Office, who works a  
17 great deal on designing the cap-and-trade programs.  
18 And it is her group that has designed the model state  
19 program language that this proposal focuses on.

20 And there's also, to my immediate right, Howard  
21 Hoffman, who's with our Office of General Counsel,  
22 who's the lead attorney for the Clean Air Interstate  
23 Rule and a host of other rules, as well, for the Air  
24 Office.

25 I recognize that many of you have come a great

6/3/04

1 distance, and we appreciate you making the time to  
2 participate. Before we move into the comment period,  
3 I'd like to briefly describe today's rule and talk a  
4 little bit about the ground rules here, which are  
5 limited but nonetheless just are designed to keep the  
6 day moving.

7 The Clean Air Interstate Rule, or CAIR, as we  
8 call it, is a proposal to reduce interstate transfer of  
9 fine particles and ozone. The rule is designed to  
10 reduce and cap emissions of sulfur dioxide and nitrogen  
11 oxides in the eastern part of the United States.

12 The states have two options of participating in  
13 this program. One is to join cap-and-trade system,  
14 which is detailed in the SNPR that we're going to talk  
15 about, that will run, be administered, if you will, by  
16 EPA. And the other is to make those reductions through  
17 an independent set of controls that they verify for us  
18 will be sufficient to do the job of providing the SO<sub>2</sub>  
19 and NO<sub>x</sub> reductions required in the state levels.

20 The Clean Air Interstate Rule basically will  
21 reduce power plant SO<sub>2</sub> emissions by approximately  
22 3.6 million tons annually by 2010 and it will reduce  
23 ultimately, when it hits the cap levels in the eastern  
24 part of the United States, SO<sub>2</sub> annually by about  
25 5.5 million tons. For NO<sub>x</sub>, the emission reductions

6/3/04

1 will be also quite substantial, measuring about 1.5  
2 million tons of reduction annually by 2010 and 1.8  
3 million tons by 2015 when the cap actually is lowered.

4 By substantially reducing SO<sub>2</sub> and NO<sub>x</sub> emissions  
5 across a multistate region, the Clean Air Interstate  
6 Rule will help many states and cities across the  
7 country meet the national health-based air quality  
8 standards that we have in place for ozone and fine  
9 particles. Because SO<sub>2</sub> and NO<sub>x</sub> contribute to the  
10 formation of fine particles in ground-level ozone,  
11 these pollutants are really associated with a lot of  
12 illnesses and in some cases, premature death.

13 Reducing emissions from these pollutants will  
14 significantly address the health issues concerned with  
15 the agency and the public at large, in addition to  
16 improving visibility and protecting sensitive  
17 ecosystems from problems such as acid rain.

18 The supplemental proposal that is the subject  
19 of today's hearing provides important details and  
20 regulatory text for CAIR. It does not change the  
21 required reductions and time lines proposed by the rule  
22 back in January. EPA is in the process of reviewing  
23 the extensive public comments that we received at the  
24 end of March on that proposal and plans to respond to  
25 those comments as well as the ones that we get after

6/3/04

1 this hearing on the supplemental notice in the final  
2 rule making that we are going to complete this fall.

3 The supplemental notice includes model  
4 cap-and-trade programs for power plants that states may  
5 adopt to achieve required emission reductions.  
6 Cap-and-trade programs, like the Clean Air Act's Acid  
7 Rain Program are recognized not only for ensuring  
8 significant emission reductions and lowering costs, but  
9 also providing incentives for early reductions and  
10 developing innovative strategies.

11 Use of the cap-and-trade mechanism in the  
12 achievement of the requirements of CAIR will ensure  
13 complete accountability and transparency, as well as  
14 the savings and streamlined implementations, which are  
15 the objectives of this rule.

16 The notice also includes details on proposed  
17 integration of the original proposal with existing  
18 Clean Air Act requirements. In particular, for the  
19 Regional Haze Program, EPA is proposing that the  
20 emissions reductions under this rule, if achieved by  
21 power plants under the model cap-and-trade program,  
22 would satisfy source-specific best available retrofit  
23 technology, BART, requirements for the power sector.

24 Now let's turn to the comment portion of  
25 today's hearing to talk about a few ground rules and



6/3/04

1 what we'll be doing from this hearing. We will be  
2 preparing a written transcript, which will be available  
3 as part of the official record. We are also accepting  
4 written comment on the proposed rule for 45 days after  
5 its publication in the Federal Register. That's  
6 expected to be this week or early next. We have a --  
7 excuse me -- we have a handout available at the  
8 registration table with detailed information for  
9 submitting written comments to us.

10 Now I would like to outline a couple of the  
11 ground rules. I will call the scheduled speaker to the  
12 microphone. At that point, I wish that you would  
13 submit -- or, excuse me, state your name, your  
14 affiliation, and where you are from. It will also help  
15 the court reporter here if you will also spell your  
16 name.

17 In order to be fair to everyone that's come to  
18 the hearing, we are asking you to limit your testimony  
19 to five minutes each. After you finish your testimony,  
20 a panel member will ask clarifying questions, if there  
21 are any. And we will be transcribing today's hearing,  
22 and each speaker's oral testimony will become part of  
23 the official record of this rule making. Please be  
24 sure to give a copy of any written comments that you've  
25 brought to the registration table.

6/3/04

1           In the interest of making the best use of  
2 everyone's time, we ask that you respect the  
3 time-keeping system, which consists of a green, yellow,  
4 and red light. When you begin speaking, the green  
5 light will come on. The yellow light will signal that  
6 you have two minutes left to speak. We ask that you  
7 conclude your remarks when the red light comes on.

8           If you would like to testify but have not  
9 registered to do so yet, please sign up at the  
10 registration table. It is our intention to allow  
11 everyone an opportunity to comment. We ask for your  
12 patience as we proceed throughout the day.

13           Again, thank you very much for joining us in  
14 participating in this hearing. So now let's get  
15 started.

16           The first speaker is Conrad Schneider. Would  
17 you please come up?

18           MR. SCHNEIDER: Good morning. My name is  
19 Conrad Schneider, S-c-h-n-e-i-d-e-r. I'm the advocacy  
20 director of the Clean Air Task Force. And I'm from  
21 Brunswick, Maine, however, our organization is based in  
22 Boston. We're an environmental nonprofit advocacy  
23 organization. And I'm pleased to have this opportunity  
24 to be able to address the panel for the record today on  
25 the CAIR rule. And I have a short PowerPoint

6/3/04

1 presentation that I can go through and I'll be happy to  
2 answer any questions you might have about it.

3 First of all, you know, in a vacuum, we're  
4 pleased that EPA is moving forward with a rule that  
5 would cut emissions of sulfur dioxide and nitrogen  
6 oxides in the applicable region. There is no question  
7 about that. The concern that I'll raise today really  
8 relates to the comments that we already filed and will  
9 file in this period about whether the proposal meets  
10 the legal standard under the law necessary for a rule  
11 of this type. Significant contribution; you're also  
12 under a requirement to examine for, from the  
13 perspective of executive orders, the costs and benefits  
14 of the rule and so forth. So my comments are really  
15 given in that light and that spirit.

16 So our overarching comment is that, before I  
17 get into the substance, though, the process. I'll just  
18 note we haven't had a lot of time to be able to process  
19 the new information that's come out in your technical  
20 information or even some of the specific substance of  
21 the proposal. So I'm not going to be able to address  
22 all of those today. You know, this rule is not yet  
23 published, as you noted, and you guys dropped a lot of  
24 information onto the Web just earlier this week, so  
25 just note that, please.

6/3/04

1 Our concern is that, notwithstanding the  
2 proposal that's finalized, there are many areas within  
3 the relevant region that will not meet the PM<sub>2.5</sub> or  
4 eight-hour ozone standards. In order to do so, we  
5 really need steep, steeper than you proposed, cuts in  
6 those two pollutants, and I'm going to get into that in  
7 a second. And those reductions really need to happen  
8 under the law by 2010, we feel, in order to allow the  
9 states to meet their timely attainment objectives.

10 And in addition, I would add since you added to  
11 this discussion, that meeting the requirements in terms  
12 of visibility will also require much greater reductions  
13 even than you've proposed here ultimately.

14 I'm just going to talk a little bit about  
15 nonattainment, and we've done some IPM and REMSAD runs  
16 and matched them to yours. This is the base in 2010.  
17 All of my comments can be referenced to 2010 because  
18 that's the attainment date. Next slide. And your  
19 proposal does something to alleviate that problem, but  
20 in our comments, we propose an alternative which in  
21 2010 would reduce that number to 13 counties in  
22 nonattainment and by 2015, the date that you're  
23 comparing in your technical documents, actually reduce  
24 it down to five. So we feel that there can be more  
25 done beneficially and cost-effectively and more needs

6/3/04

1 to be done under the definition of significant  
2 contribution under the rule.

3 So in summary, our view is that your proposed  
4 reductions are too little and too late, and we have  
5 proposed this alternative which, put in sort of lay  
6 terms, in essence mirrors for the region EPA's 2001  
7 Straw proposal, which reinstated a 2 million ton sulfur  
8 cap that works out to 1.4 in the region. And the  
9 details of the NO<sub>x</sub>, the caps that we proposed are in  
10 our comments. Next.

11 And under Executive Order 12866, you're  
12 required to look at and try to maximize, look at  
13 different alternatives and then try to maximize one of  
14 those alternatives will be the net benefits. And I'll  
15 just use as one example our alternative we proposed in  
16 our comments.

17 Here we've gone through the typical process  
18 using the same methodology that you do to estimate cost  
19 using IPM, using net benefits, using REMSAD-based  
20 modeling, and BenMAP end function modeling to figure  
21 out what the costs and benefits are. As you can see in  
22 the red, the net benefits of our alternative are much  
23 greater than the benefits of your proposal in 2010.

24 Now -- if you'll go back one slide -- and we're  
25 also through that process actually able to quantify the

6/3/04

1 number of lives saved from those dates under each of  
2 the proposals. Typical analysis that you do for RIAs  
3 shows that there is much greater power in terms of not  
4 just the legal test but in terms of policy and saving  
5 lives under a tighter proposal in those dates.

6 Okay. Switching ground for a second to this  
7 new idea, which is that the CAIR might be able to  
8 supplant the specific BART requirements, we believe is  
9 a legal matter. These things are separate and  
10 independent from each other. We don't believe by  
11 regulation you can alter it from the course that  
12 Congress set to develop a full visibility program under  
13 169A of the act.

14 We know and you know that states will need  
15 substantial additional reductions from all available  
16 sources in order to meet the ultimate goal of regaining  
17 natural vistas in our national parks. And we don't  
18 believe it's appropriate to exempt power plants from  
19 the BART source categories. We really believe we need  
20 the CAIR strengthened and moved up in time and a BART  
21 rule, strong BART rule, to achieve that.

22 And my colleague, Bruce Hill, from the Clean  
23 Air Task Force, will address, I'm not sure, this group  
24 or another group tomorrow on the details of this. But  
25 I'll just leave you with one thought that if you are

6/3/04

1 trying to qualify the CAIR as better than BART, we  
2 would submit that it's not appropriate to include  
3 non-BART sources in that showing. We believe that  
4 violates both the act and the principle that BART  
5 reductions meet in addition to other programs.

6 So what I'm going to do is right now is to show  
7 you views of Acadia National Park. These were -- are  
8 modeled images that were made from the wind haze  
9 modeler that NPS uses to evaluate the air quality. And  
10 this is a representation of the 80th percentile day in  
11 Acadia National Park. This is supposed to be the view  
12 of Blue Hill from the top of Cadillac Mountain.

13 And if you would go to the next slide, you can  
14 see what the benefit of the CAIR rule would be for that  
15 view. Let's just toggle back and forth, just in case  
16 you missed it. It's hard to see that there's actually  
17 any benefit. This is actually the 1.2 deciview  
18 improvement that would be anticipated by your rule.  
19 It, there is actually a perceptible difference if you  
20 look on the laptop. It's not really coming through  
21 here.

22 Let's go to the next slide. You can see that  
23 that is the regional haze target view, which is  
24 1 deciview above, you know, less visibility than  
25 natural. So that's how far we really have to come and

6/3/04

1 how far short the CAIR is from the ultimate goal.  
2 Bruce, tomorrow, will get into the issue of how it  
3 relates to BART, how it relates to glide path, how it  
4 relates to all the different issues. But, you know, we  
5 have this much ground to make up in terms of restoring  
6 visibility and pristine conditions.

7 We feel it's inappropriate to, at this point,  
8 start throwing out programs. We know all the programs  
9 work together. And, of course, the CAIR can't deliver  
10 guaranteed reductions in specific places. For example,  
11 I'll use an example from your modeling, the TVA system.  
12 Your, for sulfur, your IAQR target is about 70 percent  
13 reduction in sulfur dioxide. Your modeling shows that  
14 the TVA system reduces their SO<sub>2</sub> emissions by  
15 40 percent. So for Great Smoky, which is an impacted  
16 area from the TVA system, they're not going to achieve  
17 the reductions that would be expected if you had, you  
18 know, pro rata special distribution of the benefits.  
19 So that's just one example of where if you're in the  
20 underserved particular area relative to even your own  
21 target is much less than BART.

22 I'll just add that there are several issues  
23 that have popped up in just the last week. I'm not  
24 going to go into detail. These are detailed in my  
25 written comments. I won't spend my last couple seconds



6/3/04

1 on going through. There are a number of different  
2 issues, including especially flow control, if you're  
3 talking about supplanting the NO<sub>x</sub> SIP Call, the issue  
4 of how you calculate the allowances, and even I guess  
5 there's new information or a new proposal about  
6 definitions, and we have concerns that we will  
7 articulate about all those things. I'll be happy to  
8 take any questions from the panel.

9 MR. NAPOLITANO: Thank you. Will we be able to  
10 get a copy of this presentation for reference?

11 MR. SCHNEIDER: I can either leave it  
12 electronically today or I can submit it, you know, when  
13 we submit our comments to the record.

14 MR. PAISIE: If you can get it to me by e-mail.

15 MR. SCHNEIDER: Great.

16 MR. NAPOLITANO: Thank you, Conrad, very much.

17 MR. SCHNEIDER: Yeah. The benefits were  
18 calculated using the benefits methodology that you-all  
19 used in Clear Skies and you slightly changed that  
20 methodology when you went to the IAQR. And we will be  
21 submitting a formal record, recalculated numbers that  
22 match exactly that methodology. But for now, we've  
23 just replaced them, and all of the benefits will be a  
24 little bit less using the new methodology, by about  
25 11 percent less.

6/3/04

1 MR. NAPOLITANO: In case you just joined us,  
2 we're trying to get you ten minutes, here, on the  
3 clock. The next speaker that we have is John Kinsman  
4 from the Edison Electric Institute, please. Excuse us,  
5 John. Okay. We're good to go. Thank you.

6 MR. KINSMAN: My name is John Kinsman. I'm  
7 director of air quality programs at Edison Electric  
8 Institute, which is the association of United States  
9 shareholder-owned electric companies which generated  
10 almost 70 percent of electricity in the United States  
11 in 2001. EEI members have a crucial interest in the  
12 proposed Clean Air Interstate Rule, CAIR rule, which  
13 will require hundreds of facilities to install new  
14 emission control equipment over the next decade or so  
15 at a cumulative cost of tens of billions of dollars.

16 EEI is generally supportive of the policy  
17 objective underlying EPA's proposed rules and the  
18 proposed rule's goal of making a substantial  
19 contribution towards attainment of the new national  
20 ambient air quality standards for eight-hour ozone and  
21 fine particles and the approach, the kind of  
22 cap-and-trade program that has proven so successful  
23 since passage of the Clean Air Act Amendments of 1990.

24 EPA's proposal would achieve the largest air  
25 pollution reductions of any kind not specifically

6/3/04

1 mandated by Congress. However, regarding the purported  
2 health effects of sulfate and nitrate fine particles,  
3 focusing only on specific PM<sub>2.5</sub> constituents at issue in  
4 this rule making, sulfates and nitrates, calls into  
5 question whether the health benefits that the agency  
6 has projected will actually be produced, as discussed  
7 in great detail in EEI's March 30 comments on EPA's  
8 January 30 notice of proposed rule making.

9 EEI supports efficient actions to further  
10 reduce emissions. EEI has discussed multi-emission  
11 programs in earnest with EPA and environmental groups  
12 and Congress since the mid-1990s and realizes the need  
13 to further reduce emissions of SO<sub>2</sub>, NO<sub>x</sub>, and mercury.  
14 But we need to build on substantial progress made to  
15 date.

16 Electric generators in the United States,  
17 including EEI members, already have achieved massive  
18 reductions in their SO<sub>2</sub> and NO<sub>x</sub> emissions under  
19 existing Clean Air Act programs. For example, electric  
20 generating units, EGUs, have dramatically reduced SO<sub>2</sub>  
21 emissions through the Acid Rain Program by almost  
22 40 percent, and those reductions will grow.

23 Coal-based EGUs also have substantially reduced  
24 NO<sub>x</sub> emissions through widespread installation and use  
25 of combustion controls to meet the Title IV NO<sub>x</sub>

6/3/04

1 requirements. In addition, many EGUs in the eastern  
2 half of the U.S. have cut their NO<sub>x</sub> emissions even  
3 further in response to the NO<sub>x</sub> State Implementation  
4 Plan, or SIP Call, rule that went into effect in  
5 several northeastern states in 2003 and went into  
6 effect throughout the eastern U.S. earlier this week.  
7 All in all, NO<sub>x</sub> emissions have been cut 40 percent and  
8 will go even lower with a NO<sub>x</sub> SIP Call.

9           Regarding the NO<sub>x</sub> SIP Call, just as the 2004  
10 summer ozone season gets underway, a large portion of  
11 the eastern coal-based electric generating unit fleet  
12 is installing state-of-the-art pollution control  
13 technology called selective catalytic reduction, or  
14 SCR, to cut NO<sub>x</sub> emissions by nearly one million tons.

15           As a result of this new ozone-reduction  
16 regulation issued and enforced by EPA, power sector NO<sub>x</sub>  
17 emissions will fall to less than one-fifth of the  
18 nation's total NO<sub>x</sub> emissions. The industry is  
19 responsible for less than 1 percent of U.S. volatile  
20 organic compound emissions, the other emission of  
21 importance to ozone formation.

22           The power industry will spend almost  
23 \$10 billion to install the new pollution controls, and  
24 hundreds of millions each year to run them. The bottom  
25 line is that the electric power industry has made major

6/3/04

1 strides in cutting emissions already, and we will do  
2 much more. Future emissions from power plants will be  
3 reduced dramatically under the proposed EPA regulation  
4 that we are discussing at this hearing or perhaps  
5 through new legislation by Congress. Either way,  
6 emissions will be reduced by another two-thirds from  
7 current levels over the next decade or so. Emission  
8 rates per ton of coal used will be reduced by  
9 90 percent from their peaks.

10 Responding to Conrad's statement that the TVA  
11 will have only reduced their emissions 40 percent under  
12 the rule, that's ignoring substantial reductions that  
13 were already underway, already undertaken and achieved  
14 under the Acid Rain Program.

15 We also maintain that Clear Skies is the best  
16 approach. Legislative strategies for improving air  
17 quality can deliver benefits with more certainty than  
18 the proposed rules. Clear Skies targets and timetables  
19 would be established immediately, and costly and  
20 time-consuming litigation would be significantly  
21 reduced or eliminated. Clear Skies would eliminate  
22 state-to-state differences in implementation, which  
23 could seriously constrain compliance options. As a  
24 congressional mandate, Clear Skies would clarify and  
25 simplify the Clean Air Act for affected power

6/3/04

1 generators while the proposed rules are simply another  
2 layer on top of the existing regulatory labyrinth.

3 We agree with EPA Administrator Leavitt who  
4 stated last December that, We continue to believe that  
5 the Clear Skies Act is the best approach to reducing  
6 power plant emissions.

7 As far as comments on the Clean Air Interstate  
8 Rule, while the EEI is supportive of the underlying  
9 policy objectives, we have several concerns, including  
10 the timing, lack of certainty, and the potential lack  
11 of flexibility.

12 Regarding the time, many EEI members are  
13 concerned that power generators may not have enough  
14 time to install all the control technologies that would  
15 be needed to meet the rule's emission reduction  
16 mandates, especially for reduction requirements  
17 imminent in the next half decade. On pages 30 to 32 of  
18 the supplemental proposal, EPA discusses the  
19 implementation schedule for the CAIR, and on page 32,  
20 requests comments on all aspects of the issues  
21 concerning the timing of the proposed CAIR compliance  
22 dates in relation to the National Ambient Air Quality  
23 Standard attainment dates.

24 EEI believes, based on the real world  
25 considerations discussed in our March 30 comments, that

6/3/04

1 the industry will be hard-pressed to meet the 2010  
2 deadlines and that the suggestion by some commenters on  
3 the January proposal to accelerate the date for CAIR  
4 emission reductions to before January 1, 2010, should  
5 be rejected.

6           Regarding regulatory certainty, because EPA is  
7 proposing the CAIR under its existing rule making  
8 authorities, the agency has a lesser ability to affect  
9 other sections of the Clean Air Act. EEI is generally  
10 supportive of EPA's approach regarding how CAIR would,  
11 number one, satisfy best available retrofit technology,  
12 BART, requirements; and number two, effectively replace  
13 requirements under the NO<sub>x</sub> SIP Call.

14           In addition, EPA should do all that it can to  
15 ensure utilities subject to the rule that compliance  
16 with the CAIR will, one, satisfy the 2018 reasonable  
17 further progress goal under the Regional Haze rule;  
18 number two, preclude affected sources and states from  
19 being targeted by redundant Section 126 petitions and  
20 EGU source-specific control requirements; and number  
21 three, reinforce the fact that pollution control  
22 projects undertaken to comply with the CAIR are  
23 not subject to NSR permitting requirements.

24           Specifically related to BART, in the  
25 supplemental proposal on page 101, EPA states, Today,

6/3/04

1 EPA proposes that BART-eligible EGUs in any state  
2 affected by CAIR may be exempted from BART for controls  
3 for SO<sub>2</sub> and NO<sub>x</sub> if that state complies with CAIR  
4 requirements through adoption of the CAIR cap-and-trade  
5 program for SO<sub>2</sub> and NO<sub>x</sub>. EPA has demonstrated that the  
6 proposed CAIR cap-and-trade program is better than BART  
7 for BART-eligible EGUs within the proposed CAIR region.  
8 EEI supports this finding.

9           Regarding the NO<sub>x</sub> SIP Call, EEI supports EPA's  
10 proposal to allow states to write rules under which  
11 compliance with the annual caps will satisfy compliance  
12 with the ozone season caps under the NO<sub>x</sub> SIP Call. The  
13 alternative, that is, having both ozone season caps and  
14 annual caps with which to comply without corresponding  
15 environmental and regulatory benefits, would only add  
16 to the burdens of compliance.

17           And regarding regulatory flexibility and  
18 emissions trading, in the supplemental proposal on  
19 pages 136 to 138, EPA discusses the tremendous benefits  
20 of emissions trading for the regulated community and  
21 the environment. EEI has, for more than 15 years,  
22 strongly supported emissions trading and continues to  
23 note the overwhelming success of the acid rain SO<sub>2</sub>  
24 program and the utter lack of any hot spots being  
25 created by emissions trading programs. EEI commends



6/3/04

1 the agency for implementing the CAIR through a  
2 cap-and-trade program.

3 Some specific emissions trading issues will now  
4 be discussed, first, early action credits for NO<sub>x</sub>. In  
5 the supplemental proposal on page 99, EPA solicits  
6 comments on whether NO<sub>x</sub> emission reduction credits  
7 should be included in the CAIR, and if so, how a NO<sub>x</sub>  
8 ERC program should be structured. EPA proposes four  
9 possible approaches that may be utilized.

10 EEI had recommended in its March 30 comments  
11 that EPA should propose in their upcoming supplemental  
12 notice on CAIR emission trading programs a wide range  
13 of flexible alternatives that would allow for early  
14 reduction credits for NO<sub>x</sub>. Accordingly, EEI  
15 appreciates the agency's consideration of alternatives  
16 and will attempt to comment further in writing during  
17 the comment period.

18 On the issue of emissions banking, EEI supports  
19 the EPA's proposal not to require restrictions on the  
20 ability to use banked allowances, pages 190 to 192 of  
21 the supplemental proposal. EEI concurs with EPA's  
22 conclusions that flow control is a very complicated  
23 procedure to explain, understand, and implement.

24 Regarding opt-in for non-EGUs, on pages 159 to  
25 166 of the supplemental proposal, EPA discusses

6/3/04

1 individual unit opt-in for sources otherwise not  
2 subject to the proposed CAIR. EPA presents an example  
3 opt-in approach that could be included in the final  
4 CAIR model rules.

5 At this time, EEI does not offer any specific  
6 comments on the example for a potential opt-in  
7 approach. But we note that EPA does note in the  
8 supplemental proposal that, quote, if a state chooses  
9 to achieve emissions reductions from non-EGUs, then the  
10 state's EGUs may not participate in the  
11 EPA-administered cap-and-trade program. If the EPA in  
12 the final CAIR model rule allows for opt-ins, the EEI  
13 believes that the agency should make more clear that  
14 such opt-ins would not disqualify the state's EGUs from  
15 participating in the EPA-administered cap-and-trade  
16 program.

17 And with regard to allowance auctions, on pages  
18 145 to 146 of the supplemental proposal, EPA discusses  
19 the concept of auctions of allowing -- emissions  
20 allowances. Noting that EPA has softened its  
21 discussion of this issue from its January proposal, EEI  
22 nevertheless notes its continued opposition to  
23 allowance auctions, as discussed at length in EEI's  
24 March 30 comments.

25 In conclusion, any new regulations must begin

6/3/04

1 to integrate and streamline the NO<sub>x</sub> SIP Call, NSR,  
2 Section 126, BART, and Regional Haze programs.  
3 Further, if the current proposals, including the  
4 mercury proposal, are to achieve the desired emission  
5 reductions at reasonable cost to the American consumer,  
6 it is necessary to provide flexible timeframes to  
7 feasibly allow construction activities at hundreds of  
8 units, requiring a capital investment of tens of  
9 billions of dollars.

10 EEI appreciates the opportunity to provide  
11 comments on the proposal.

12 MR. NAPOLITANO: Thank you, John. Any  
13 questions? Thank you very much. Our next speaker is  
14 Michael Bradley from the Clean Energy Group. Michael,  
15 we're just going to run with a running clock, here.

16 MR. BRADLEY: Okay. Do I need to spell my  
17 name? It's B-r-a-d-l-e-y.

18 MR. HOFFMAN: Do you happen to have any extra  
19 copies?

20 MR. BRADLEY: I left three copies with the, at  
21 the desk. I do have additional copies, if you want  
22 them.

23  
24 MR. NAPOLITANO: Mike, you have to about 42  
25 minutes. We're going to just let the clock run.

6/3/04

1 MR. BRADLEY: I'm not worried about it. Good  
2 morning. My name is Michael Bradley. I'm the  
3 executive director of the Clean Energy Group. Clean  
4 Energy Group is a coalition of electric generating and  
5 electric distribution/transmission companies that share  
6 a commitment to responsible environmental protection  
7 and stewardship. Members include Calpine Corporation,  
8 Conectiv Energy, Consolidated Edison, Entergy  
9 Corporation, Exelon Corporation, KeySpan Corporation,  
10 National Energy & Gas Transmission, Northeast  
11 Utilities, Public Service Enterprise Group, and Sempra  
12 Energy.

13 With electric generating plants in operation or  
14 under development in all regions of the country, the  
15 Clean Energy Group member companies have a diverse  
16 generation mix of more than 120,000 megawatts that  
17 includes substantial coal-, oil-, and gas-fired  
18 generation as well as nuclear, hydroelectric, and  
19 renewable assets.

20 Since 1997, Clean Energy Group has been  
21 actively engaged in the developments of the federal,  
22 regional, and state air quality initiatives related to  
23 electric, the electric generating sectors, such as NO<sub>x</sub>  
24 SIP Call, New Source Review reform, the mercury and  
25 nickel MACT rule, and multipollutant legislation. As

6/3/04

1 such, our membership has a keen interest in EPA's  
2 proposed Clean Air Interstate Rule.

3 The Clean Energy Group provided EPA oral and  
4 written comments on the originally proposed rule.  
5 This, that appeared in the Federal Register back in  
6 January of this year. I'm not going to iterate all of  
7 the issues that we got into there, but I'm going to add  
8 some following comments that are more germane to the  
9 supplement.

10 The Clean Energy Group continues to advocate  
11 enactment of multipollutant legislation for the  
12 electric generating sector that comprehensively reduces  
13 emissions from fossil fuel fire-powered power plants in  
14 an integrated manner that includes a flexible but  
15 environmentally protective replacement for the New  
16 Source Review program. Specifically, the group  
17 supports the Clean Air Planning Act of 2003, Senate  
18 Bill 843. CEG believes that a legislative approach  
19 will provide maximum certainty in the future for  
20 investments in new electric generating capacity as well  
21 as for pollution control expenditures.

22 Additionally, in the context of national  
23 multipollutant legislation, such as the Clean Air  
24 Planning Act, the Clean Energy Group believes that even  
25 stricter NO<sub>x</sub> and SO<sub>2</sub> caps along with an earlier

6/3/04

1 implementation time frame could be justified from an  
2 air quality standpoint than what is proposed in CAIR.

3 However, CEG recognizes that there's no  
4 guarantee that Congress will move forward in enacting  
5 such legislation. On this basis, we applaud the  
6 administration for its efforts to promulgate new  
7 regulations requiring additional SO<sub>2</sub> and NO<sub>x</sub> emission  
8 reductions from electric generating units that  
9 contribute to downwind nonattainment of the eight-hour  
10 ozone standard and the PM<sub>2.5</sub> standard. The Clean Energy  
11 Group believes that the proposed CAIR, when fully  
12 implemented, will go a long way towards improving air  
13 quality in the eastern half of the United States while  
14 at the same time reducing investment uncertainty in the  
15 electric generating sector.

16 With respect to the supplemental proposed --  
17 proposal recently released by EPA, however, CEG is  
18 disappointed in the fact that the agency decided to  
19 eliminate the discussion of an optional approach to the  
20 proposed heat input-based approach for establishing  
21 state NO<sub>x</sub> budgets under CAIR based on the generation  
22 output approach that appeared in the May 11 draft of  
23 the proposed supplemental rule that was sent to the  
24 Office of Management and Budget for review. Attached  
25 to my written testimony is a copy of the May 11 draft

6/3/04

1 version of Section II of the preamble of the proposed  
2 supplemental rule, entitled, State-by-State Emission  
3 Reduction Requirements and EGU Budgets, which the Clean  
4 Energy Group requests be entered into the record along  
5 with my testimony.

6 In its comments back in January -- on the  
7 January rule -- I guess that was in March -- EPA --  
8 Clean Energy Group strongly recommended that the state  
9 NO<sub>x</sub> in the CAIR be based on each state's pro rata share  
10 of generation output and that EPA promote the concept  
11 of output-based allowance allocations to the affected  
12 sources in its model rule.

13 There is increasing recognition by policymakers  
14 that output-based regulation is an important method of  
15 rewarding and encouraging efficiency. In fact, EPA  
16 considered recommending output-based allocations late  
17 in the development of the NO<sub>x</sub> SIP Call rule. A  
18 judgment was made at that time that it was too late in  
19 the process to change horse to an output-based  
20 approach, but EPA made the commitment to apply an  
21 output-based approach in the second round of the  
22 Section 126 trading rule, which was published in the  
23 Federal Register on January 18, 2000.

24 In 1999, EPA convened an Updating Output  
25 Emission Limitation Workgroup to work through the

6/3/04

1 perceived challenges in implementing an output-based  
2 emission trading program, such as monitoring data  
3 availability and the treatment of combined heat and  
4 power systems. Based on the input received from this  
5 workgroup, EPA published a guidance document for states  
6 participating in the NO<sub>x</sub> Budget Trading Program under  
7 the NO<sub>x</sub> SIP Call entitled, Developing and Updating  
8 Output-Based NO<sub>x</sub> Allowance Allocations. That was  
9 published in May 2000.

10 Several states, including New Hampshire,  
11 Massachusetts, Connecticut, and New Jersey adopted and  
12 are using output-based allocation allowances in their  
13 NO<sub>x</sub> SIP Call programs. These programs are proving to  
14 be effective and relatively straightforward to  
15 administer. Considering the clear policy benefits  
16 associated with output-based allocation approaches, CEG  
17 respectfully requests that EPA prepare and issue  
18 another supplemental rule proposal that discusses the  
19 pros and cons of an optional output-based approach to  
20 determination of state budgets. We strongly believe  
21 that an opportunity for public review and comment on  
22 this important issue should be provided.

23 CEG will address additional issues and provide  
24 a much more comprehensive set of comments on the  
25 supplemental rule in its written comments later on this



6/3/04

1 year once the rule is published and the time frame is  
2 known. Thank you.

3 MR. NAPOLITANO: Thank you, Michael. Does  
4 anybody have any questions? Thank you very much. The  
5 next speaker, would you please come to the podium,  
6 Mr. Ray Butts from Florida Power & Light Company,  
7 please.

8 MR. BUTTS: Good morning. My name is Ray  
9 Butts. That's B-u-t-t-s. I'm the manager of  
10 strategic & regulatory planning in the environmental  
11 services department of Florida Power & Light Company.  
12 Florida Power & Light Company is the regulated utility  
13 of FPL Group and is the largest investor-owned utility  
14 in the state of Florida, serving approximately  
15 seven million people with a generating capacity of over  
16 19,000 megawatts. FPL Group also includes our  
17 wholesale electric generating company, FPL Energy, with  
18 an additional 11,000 megawatts of electric generation  
19 operating in 24 states.

20 Regarding our comments on the Clean Air  
21 Interstate Rule, let me first note that FPL Group  
22 supports the earlier comments made by Mr. Bradley on  
23 behalf of the Clean Energy Group. We, too, believe  
24 that a comprehensive multipollutant legislation that  
25 integrates the various rules of the Clean Air Act and

6/3/04

1 reforms New Source Review is the most appropriate and  
2 efficient mechanism for achieving pollution reduction  
3 and providing economic certainty for the future of the  
4 electric generating sector.

5 Short of passing a multipollutant legislation,  
6 FPL agrees that EPA's CAIR proposal will achieve  
7 significant reductions of SO<sub>2</sub> and NO<sub>x</sub> emissions.  
8 However, we believe that EPA's supplemental rule  
9 proposal has a serious shortcoming in that it continues  
10 to promote a heat input-based method of allocating  
11 emissions allowances to state budgets. Our experience  
12 under the Clean Air Act amendments of 1990 indicate  
13 that the heat input allocation method provides a  
14 disproportionate allocation of allowances to  
15 inefficient generating units, resulting in fewer  
16 allowances in the budgets of states that have cleaner,  
17 more efficient generating units.

18 FPL believes that an output-based emissions  
19 allowance allocation system would achieve a more  
20 balanced and equitable distribution of allowances  
21 throughout the electric generating sector. An  
22 output-based allowance allocation system levels the  
23 playing field for all electric generation and is fuel  
24 neutral; it recognizes and encourages efficient  
25 electric generating units; provides the opportunity to

6/3/04

1 develop a more robust market-based trading program; and  
2 allows the allowance allocation to nonemitting  
3 generation, such as nuclear, hydro, and renewable  
4 energy sources.

5           These nonemitting energy sources are part of  
6 the solution for reducing pollutant emissions and  
7 should be rewarded for their contribution to clean  
8 energy and thus, should be included in the allowance  
9 allocation. As Michael stated, clearly, EPA has  
10 previously recognized the value of utilizing an  
11 output-based allowance trading system. In the  
12 development of the final rule in Section 126 petition  
13 clearly stated that the agency has committed to  
14 adopting an output-based allocation system for the  
15 updated allocations in the Section 126 control remedy.  
16 Subsequently, EPA published a guidance document for  
17 states participating in the NO<sub>x</sub> budget trading process  
18 to assist these states in developing their own  
19 output-based NO<sub>x</sub> allowance allocations.

20           In today's rule making for the Clean Air  
21 Interstate Rule, the docket includes the May 11 review  
22 version that was sent to OMB of the supplemental notice  
23 for proposed rule making that includes a discussion of  
24 using output-based methods for allocating allowances.  
25 This output-based allocation discussion was not found

6/3/04

1 in the published version of the final supplemental  
2 notice. FPL asks that EPA publish an additional  
3 supplemental notice proposal that includes the  
4 discussion of output-based allocation methods and  
5 solicits further public review and comment of this  
6 option.

7 FPL believes that the allowance allocation  
8 method may have significant impact on the NO<sub>x</sub> budgets  
9 for several states and should be fully vetted before  
10 the final rule is developed. We will provide you  
11 written comments. Thank you.

12 MR. NAPOLITANO: Thank you. Questions for?  
13 Thank you very much. The next speaker is Mr. Chris  
14 Recchia of the Ozone Transport Commission.

15 MR. RECCHIA: Hi. Good morning. I'm Chris  
16 Recchia. I'm the executive director of the Ozone  
17 Transport Commission. Thanks for the opportunity to be  
18 here to comment on the supplemental proposal. OTC, as  
19 you know, was created by Congress under the Clean Air  
20 Act Amendments of 1990 to coordinate ground-level ozone  
21 reduction strategies in the Northeast and Mid-Atlantic  
22 region of the U.S. and to advise EPA, as we're doing  
23 today, on air transport issues. OTC represents 12  
24 states and the District of Columbia.

25 We agree that it's well past time for a

6/3/04

1 comprehensive regional approach to addressing emissions  
2 from the power sector. And the IAQR/CAIR or whatever  
3 it's going to be called in the final rule making is the  
4 most significant advance to addressing interstate  
5 transport of pollutants to date, and we are very  
6 grateful to EPA for taking the initiative to do this.

7 We do, however, have significant overarching  
8 concerns, many of which have been expressed in the  
9 earlier testimony and in writing, but I would like to  
10 kind of reiterate some of them today and talk about  
11 some of the provisions of the supplemental rule.

12 Unfortunately, I can't start this conversation  
13 without talking a little bit about process and, you  
14 know, we do want to contribute productively to this and  
15 we are putting, if you will, as us farmers in Vermont  
16 would say, all our eggs in this basket. The IAQR,  
17 CAIR, is very, very important and is the mechanism by  
18 which we see that we can finally address transport from  
19 upwind sources.

20 While we think you might be meeting your legal  
21 obligation by the timing and the format of these  
22 releases, we don't feel like we're getting a real good  
23 opportunity to get reaction from you on the earlier  
24 drafts and comments before we see a supplemental. The  
25 comments originally were based on the preamble, not on

6/3/04

1 rule language. Now we're getting some rule language  
2 but not incorporating comments. And it appears that  
3 comments really won't be incorporated until we see a  
4 final rule, and we're not sure whether that's going to  
5 be good or bad. So, you know, I also, unless we missed  
6 it, to our knowledge, this is not yet published in the  
7 Federal Register. Okay. I didn't miss it. So, you  
8 know, I do assume that it's going to be the same as  
9 this, what you guys released, but it just seems odd  
10 that we're doing this in this fashion.

11 So, you know, we have worked closely with you  
12 to define emission reductions. We supported our  
13 original comment with detailed analyses needed from  
14 this sector as part of the overall attainment strategy.  
15 We need responses to those and hope that you will  
16 seriously consider the previous comments and the  
17 comments we're making today in revisions to the rule.

18 We're emphasizing the fact that the OTC is  
19 trying to implement across this region what other  
20 states are affected by the CAIR rule the same  
21 successful work we've done with cap-and-trade in the  
22 region. To date, we've reduced our NO<sub>x</sub> emissions in  
23 the region by about 70 percent compared to about  
24 10 percent for the rest of the country. We want to  
25 emphasize that we don't expect any single rule making

6/3/04

1 to bring the entire region into attainment. We do,  
2 however, expect that a multipollutant program seeking  
3 reductions for power plants will adequately address  
4 that sector to give that sector some security and  
5 certainty but also to make sure that they are  
6 significantly contributing to our overall attainment  
7 strategy.

8 Yet in 2010, our attainment deadline for most  
9 of the ozone transport region, we'll have approximately  
10 106 counties not meeting the eight-hour ozone standard,  
11 47 of which are going to be beyond the marginal  
12 nonattainment. The IAQR, like the Clear Skies Act  
13 before it, would improve this only by about three  
14 counties.

15 In January, the OTC formally adopted a  
16 multipollutant position, rule-specific targets and time  
17 frames to give us hope of achieving attainment by  
18 gaining reasonable controls in this sector. I don't  
19 want to take the time to discuss the position in  
20 detail. You've got it; you've heard about it before.  
21 But in summary, the NO<sub>x</sub> and SO<sub>x</sub> emissions would be  
22 capped at 1.87 million tons and 3 million tons  
23 respectively by 2008, and 1.28 million tons and  
24 2 million tons by 2012.

25 We've done integrated planning modeling, IPM

6/3/04

1 modeling, using EPA's assumptions, modifying some of  
2 those. That information is in the record. We hope  
3 you'll consider and evaluate that. We've talked about  
4 meeting these reductions sooner, the fact that our  
5 attainment deadlines are sooner than the 2015 that is  
6 proposed.

7           So specific details of this proposal, I think,  
8 you know, we have a couple of major concerns. One is  
9 regarding the application of significant contribution  
10 as part of a highly cost-effective test; we don't feel  
11 that's an appropriate application of the provision of  
12 the Clean Air Act. We think you should simply use  
13 Section 110(a)(2)(d) as a SIP Call provision, that  
14 significant contribution be considered proactively  
15 during SIP submittal. We know that this would require  
16 a little more analysis up front, but we think it would  
17 create a process that finally demonstrates that all  
18 areas that significantly contribute to transport are  
19 addressing that transport -- I'm sorry, significantly  
20 contribute to nonattainment downwind are addressing  
21 that transport.

22           We don't think the link to highly  
23 cost-effective makes sense, but also we don't think the  
24 application is highly cost-effective, addresses the  
25 full scope of what the cost-effectiveness of the



6/3/04

1 reductions are or are needed in this process. We think  
2 that you need to consider the relative contribution for  
3 cost of a particular attainment strategy, as well, and  
4 if in the region, it costs significantly more to, if  
5 you will, deal with the other sectors now, because  
6 we've already dealt with power plants. We're dealing  
7 with them in our sector. If we have to do these all  
8 through local controls, first of all, our modeling  
9 shows it's impossible and secondly, if we were to do  
10 it, it would get increasingly cost ineffective. It  
11 would be much more expensive to do additional controls  
12 if you still have power plants still in the transport  
13 team region, the Midwest or West, that are, can still  
14 do the cost-effective controls that we've already done  
15 that needs to be done first. And there is no way in  
16 the highly cost-effective provision you have here to  
17 accommodate that.

18           Regarding the proposed retirement ratio, we do  
19 feel that a discount penalty on top of retirement ratio  
20 is appropriate and consistent with the NO<sub>x</sub> SIP Call,  
21 for example. However, we don't think they go to the  
22 heart of the issue concerning the SO<sub>2</sub> allowance bank,  
23 which by our estimate by 2010 is going to have about  
24 13 million tons in there. Unless we, unless we deal  
25 with it, SO<sub>2</sub> bank, we're not going to encourage early

6/3/04

1 installation and control technology, and we're going to  
2 delay meaningful reduction until the second phase, till  
3 we're through the second phase of the program and not  
4 get them for a typical length of time.

5 We recommended that we use something, a  
6 mechanism such as progressive flow control, to  
7 eliminate the number of banked allowances that can be  
8 used in a given year. Our analysis shows that a 2 to 1  
9 discount ratio and a 10 percent trigger would achieve  
10 greater reductions in a more aggressive time frame  
11 without causing, by the way, significant increase in  
12 retail electrical cost or fuel switching that is of  
13 concern to folks.

14 So finally, regarding the option of  
15 incorporating BART into CAIR, we think that we, we  
16 strongly feel that SO<sub>2</sub> and NO<sub>x</sub> reductions under the  
17 cap-and-trade program are a necessary addition to but  
18 not a replacement for the retrofit technology. We  
19 think that BART should be a benchmark from which  
20 reductions are achieved but it shouldn't substitute for  
21 that.

22 So in conclusion, OTC is committed to seeing  
23 that the transport issue is addressed. We appreciate  
24 the role that this rule can play in that. We think you  
25 have a unique opportunity, and we've provided you with

6/3/04

1 the information to make this, more certainty for the  
2 utility industry by making it more meaningful and more  
3 substantive reductions. We need them in a quick time  
4 frame in order to meet our attainment deadlines. And  
5 that's very, that's pretty much it. Thanks for the  
6 opportunity to testify again. I appreciate your work.  
7 Let me know if there is anything I can answer or help  
8 with.

9 MR. NAPOLITANO: Thank you. Questions for  
10 Chris?

11 MS. DUNHAM: Can you tell me your numbers  
12 again?

13 MR. RECCHIA: I think that I may need to check  
14 on that. But they thought it was going to be on the  
15 order of about 13 million tons banked.

16 MS. DUNHAM: By 2010. Is that just --

17 MR. RECCHIA: Just because -- yeah. Just  
18 because they're accumulating, okay. And then if that  
19 starts to get used, but it's used very slowly over  
20 time, our projections where you don't really start  
21 eating into that bank until I want to say about 2014,  
22 2015. And then it takes to, like, 2020 to get the use  
23 of that bank. I'll double-check on that number,  
24 though. It's in the record already, but I'll check on  
25 it to make sure it's right.

6/3/04

1 MR. NAPOLITANO: Chris, did you give us a  
2 written copy?

3 MR. RECCHIA: I don't have -- I will leave a  
4 written copy for you. Maybe not from anything other  
5 than myself, but I will do that.

6 MR. NAPOLITANO: Thank you.

7 MR. RECCHIA: Thank you very much.

8 MR. NAPOLITANO: Our next speaker will be  
9 Mr. Bernard Melewski from the Adirondack Council.

10 MR. MELEWSKI: Good morning.

11 MR. NAPOLITANO: Good morning.

12 MR. MELEWSKI: I have a couple of read-along  
13 copies, if you'd like them.

14 MR. NAPOLITANO: Please.

15 MR. MELEWSKI: I apologize for the quality of  
16 the read-along copies. I broke my carbon rule of not  
17 touching a finished document. So we'll be revising  
18 this document. I think again -- the clock's started?

19 MR. NAPOLITANO: Yes.

20 MR. MELEWSKI: All right. I'll find nothing  
21 objectionable about half the panel leaving before I  
22 spoke.

23 Good morning. My name is Bernard Melewski. I  
24 am here today representing the Adirondack Council. The  
25 Adirondack Council is a not-for-profit environmental

6/3/04

1 organization based in the Adirondack Park of New York  
2 State. The mission of Adirondack Council is to ensure  
3 the ecological integrity and wild character of the  
4 Adirondack Park. The Adirondack Park, as many know, is  
5 the largest park, state or federal, in the continental  
6 United States. The six million acre park includes over  
7 one million acres of true wilderness, which were  
8 protected as forever wild by the New York State  
9 constitution in 1894.

10 Due to its geography and its geology, the  
11 Adirondack Park is being destroyed by acid deposition.  
12 Acid rain is damaging the forests, the waters, and the  
13 wildlife of the Adirondack Park, including the  
14 high-elevation red spruce forests on its mountainsides.  
15 The growth and regeneration of the sugar maple trees  
16 has been stunted, and more than 500 lakes within the  
17 Adirondack Park are too acidic to support their native  
18 species of fish. Many more lakes and hundreds of  
19 streams suffer from acid shock, the acid bath that  
20 comes with the annual snowmelt. The same pollutants  
21 that cause acid rain also contribute to summer ozone  
22 and particulates that can have devastating effects on  
23 human health.

24 On February 25th of this year, the Adirondack  
25 Council testified at public hearings held by EPA in

6/3/04

1 support of the proposed Clean Air Interstate Rule. As  
2 we said then, we believe that the interstate rule will  
3 result in substantial public health benefits far in  
4 excess of its cost. But we take a special interest in  
5 the secondary benefits of the reduction in acid  
6 deposition throughout the eastern portion of the nation  
7 and in the most sensitive area, the Adirondack Park.

8 The new cap-and-trade program envisioned in the  
9 proposed rule and the target reductions in emissions  
10 meet or exceed the recommendations in the report to  
11 Congress for the National Acid Deposition Assessment  
12 Program in 1998, and EPA's regional cap-and-trade  
13 approach for these two pollutants is also consistent  
14 with the recommendations of several other subsequent  
15 reports, including those by the National Academy of  
16 Sciences; Environmental Defense; the Clean Air Network;  
17 the Southern Appalachian Mountains Initiative, SAMI;  
18 and the Association of New England Governors and  
19 Eastern Canadian Premiers.

20 We want to take this time to reiterate our  
21 strong support of nitrogen reductions on a year-round  
22 basis. In its 1995 report to Congress on the progress  
23 of the acid rain control program, the EPA observed that  
24 the contribution of nitrogen emissions to the overall  
25 acid deposition problem had been underestimated. In

6/3/04

1 the Adirondacks, nitrogen builds up in the winter snow  
2 pack, and with the spring snowmelt, contributes heavily  
3 to the episodic acidification of lakes and streams.

4 We also believe that the agency's proposals to  
5 integrate the proposed rule with the existing Acid Rain  
6 Program by increasing the number of sulfur allowances  
7 required to be held by electric generating units in  
8 order to emit one ton of sulfur dioxide in 2010 and  
9 again in 2015 and beyond is a reasonable approach. We  
10 urge the agency to resist calls for relaxation of the  
11 proposed second phase or the adoption of a wait-and-see  
12 approach after 2010.

13 The agency poses in the supplemental rule the  
14 following dilemma for further public comment: That the  
15 proposed retirement in 2015 and beyond of sulfur  
16 dioxide allowances at a rate of three allowances per  
17 ton will result in slightly increased reductions in  
18 emissions beyond levels envisioned by the agency. In  
19 other words, the cap on sulfur emissions might actually  
20 be lower than initially proposed.

21 The agency treats this as a dilemma with only  
22 two answers. The first is to reduce the proposition to  
23 2.86 allowances per ton. The second option is to  
24 retain the 3.1 -- 3 to 1 retirement ratio to allow the  
25 states to pool the excess allowances and distribute

6/3/04

1 them as they see fit. We would propose a third option,  
2 that of no change.

3 Public comments already received by EPA in the  
4 docket support this third option. The Adirondack  
5 Council previously asked EPA to propose additional  
6 reductions in the emissions of sulfur dioxide from  
7 electric generating units. Many other regional and  
8 national environmental organizations, some of which  
9 have already spoken today, share that view, including  
10 the Citizens Campaign for the Environment, Chesapeake  
11 Bay Foundation, Clean Air Task Force, and the Natural  
12 Resources Defense Council.

13 Commentators from state agencies, like the New  
14 York State Department of Environmental Conservation and  
15 their counterparts from Vermont, Massachusetts,  
16 South Carolina, Wisconsin, Pennsylvania, Maine,  
17 Minnesota, and North Carolina also are in agreement.  
18 Deeper cuts were also recommended by the State and  
19 Territorial Air Pollution Program Administrators and  
20 Association of Local Air Pollution Control Officials,  
21 as well as the Ozone transfer -- Transport Commission,  
22 as you heard today.

23 If, however, the agency will only consider one  
24 of the two alternatives it poses here, then the  
25 creation of a bank of excess allowances with each state



6/3/04

1 makes more sense. As suggested by EPA, the states  
2 could then allocate these allowances as intended to  
3 achieve pollution reductions from other sources or even  
4 retire them at their discretion, which I assure you  
5 we'll be urging New York State to do.

6 Finally, a word about regional haze and the  
7 BART rule. The agency proposes in this supplemental  
8 rule to make a legal determination that the  
9 participation of EGUs in the cap-and-trade program of  
10 the Clean Air Interstate Rule will suffice as better  
11 than BART in determining compliance with regional haze  
12 provisions of the Clean Air Act. At the same time, the  
13 agency seeks to rationalize the fact that it has not  
14 done the modeling that it would normally undertake to  
15 make such a determination.

16 We strongly object on two obvious grounds.  
17 First, specific modeling of the effects on regional  
18 haze should be complete prior to taking such an action.  
19 We believe that the attempt here to interpret the  
20 modeling conducted for other purposes will end up with  
21 the acronym, T-R-O-U-B-L-E.

22 Second, the better than BART debate belongs in  
23 the Regional Haze rule revisions now under  
24 consideration, which will be the subject of upcoming  
25 hearings, in fact, tomorrow. It should not be

6/3/04

1 cluttering up the already complicated issues  
2 surrounding the proposed interstate rule, some of which  
3 we've heard about today already. If EPA wanted to  
4 signal the states and the affected EGUs of its  
5 intention, that's been accomplished. But the council  
6 urges you to withdraw the Regional Haze provision --  
7 revisions from these proceedings and address them in a  
8 more appropriate venue.

9 Thank you for the opportunity to share our  
10 views. The council may supplement our testimony,  
11 will supplement our testimony with additional comments  
12 as we continue to review the proposed rules as they are  
13 published. And I wanted to second the comment of the  
14 previous speaker that we do appreciate all of your  
15 work.

16 MR. NAPOLITANO: Thank you. Questions? Thank  
17 you very much. Our next speaker will be Mr. Jeffrey  
18 Loveng from FirstEnergy Corporation.

19 MR. LOVENG: Good morning. My name is Jeffrey  
20 Loveng, and I represent FirstEnergy Corporation.  
21 FirstEnergy operates a diversified portfolio of  
22 generating assets, primarily in Ohio, Pennsylvania, and  
23 New Jersey. At FirstEnergy, we are committed to  
24 operating our 20 power plants in a safe, efficient, and  
25 environmentally compliant manner. Of our 13,387

6/3/04

1 megawatts of generation, approximately 55 percent is  
2 coal, 48 percent nuclear, 12 percent natural gas or  
3 oil, and 5 percent pumped-storage hydro.

4           Since the passage of the Clean Air Act, we have  
5 spent more than \$5 billion on pollution controls and  
6 environmental systems. These investments have resulted  
7 in significant emissions reductions. Since 1990 alone,  
8 we have reduced emissions of sulfur dioxide and  
9 nitrogen oxides by more than 50 percent. FirstEnergy  
10 has 6155 megawatts of scrubbed coal-fired and nuclear  
11 generation, and we're committed to doing more.

12           Our diversified generation portfolio provides  
13 flexibility in meeting increasingly stringent  
14 environmental regulations. However, we rely on  
15 base-load, coal-fired generation to meet our customers'  
16 growing needs for electricity. While we support the  
17 EPA's efforts to reduce sulfur dioxide and nitrous  
18 oxide emissions, we believe this issue requires an  
19 approach that promotes fuel efficiency and diversity,  
20 energy diversity, and that allows flexibility in  
21 planning and implementing emissions reduction  
22 strategies. The allocation of allowances is an  
23 important part of our overall strategy to meet  
24 environmental compliance.

25           Some key points that we have. First of all,

6/3/04

1 FirstEnergy supports the allocation of allowances to  
2 existing power plants based on total electrical output  
3 of all sources, rather than a heat input. A heat  
4 input-based approach gives emissions allowances to a  
5 relatively dirtier electric generator that relies  
6 solely on fossil fuels. An output-based approach would  
7 give emissions allowances to all generators of  
8 electricity, including nuclear, hydro, wind, and solar,  
9 thus providing incentives for renewables and  
10 not-emitting sources.

11 With output-based allocations of allowances,  
12 the only competitive difference between companies is  
13 properly based on the amount of pollution they produce  
14 per unit of power. The company that produces 1 percent  
15 of the power should get 1 percent of the allowances.

16 There are clear benefits from incorporating an  
17 output-based allocation approach. Output-based  
18 allocation recognizes and encourages efficiency; it  
19 promotes and forces emerging technologies by creating  
20 strong incentives to improve existing and develop new  
21 methods to reduce emissions; it allows the market to  
22 decide rather than favoring one form of power  
23 generation over another; it produces substantial  
24 copollutant benefits; it more fully internalizes  
25 externalities and creates dynamic incentives to invest

6/3/04

1 more in nonpolluting and less polluting technologies;  
2 it promotes liquidity by creating a pool of readily  
3 available allowances; and it prompts energy diversity  
4 and creates room for coal under caps.

5 EPA made an affirmative, last-minute decision  
6 to omit discussion of an output-based allocation method  
7 from the supplement to its proposed Clean Air  
8 Interstate Rule. The version of the proposed rule that  
9 was sent for OMB to review included the discussion of  
10 the output-based method for existing plants, Docket  
11 No. OAR-2003-0053-1344. However, that language was  
12 removed before the EPA released its supplemental notice  
13 of proposed rule making. This omission is inconsistent  
14 with the CAA Section 126 rule, which stated that the  
15 agency has committed to finalizing an output-based  
16 allocation method for the subsequent updates.

17 We are submitting for the record the May 11,  
18 2004, draft of the supplemental rule that was deleted.  
19 We urge EPA to issue a supplemental notice that  
20 notifies interested parties of the addition of the  
21 draft text to the record and explains that a  
22 substantial number of commenters have requested that  
23 EPA consider output-based as well as other allocation  
24 methods for supporting state budgets.

25 While the May 11, 2004, draft language

6/3/04

1 illustrated the output method for fossil generation  
2 only, any output-based strategy should be generation  
3 neutral. That is, it should not be limited to fossil  
4 fuel only but should include nuclear, hydro, wind, and  
5 solar.

6 Thank you for the opportunity to speak on  
7 behalf of FirstEnergy and the other organizations which  
8 support an output-based method of allocating  
9 allowances. Output-based allocation allowances  
10 provides a true incentive to achieve better  
11 environmental performance and by providing maximum  
12 flexibility in doing so, allows generators to employ  
13 solutions that make the most economic sense for the  
14 industry and the consumers. We respectfully submit our  
15 comments for your consideration. Thank you.

16 MR. NAPOLITANO: Thank you. Any questions?  
17 Thank you very much. Okay. The next speaker is  
18 Mr. Michael Marvin from the U.S. Council for  
19 Sustainable Energy.

20 MR. MARVIN: Good morning. I'm Michael Marvin,  
21 M-a-r-v-i-n, president of the U.S. Business Council for  
22 Sustainable Energy. The council was created in 1992 by  
23 companies in energy efficiency, renewable energy,  
24 natural gas, electric utility, and independent power  
25 industry. Our membership spans across the energy

6/3/04

1 spectrum, including companies such as the Sacramento  
2 Municipal Utility District, NiSource, Calpine  
3 Corporation, Sempra Energy, Honeywell, GE Wind, Maytag,  
4 as well as industry trade associations representing the  
5 wind, solar, insulation, energy efficiency, and natural  
6 gas industries.

7 The council is committed to promoting policies  
8 that reduce the environmental footprint of energy  
9 production and use while simultaneously encouraging  
10 economic growth and U.S. energy independence. We have  
11 sister organizations in the U.K., Europe, and  
12 Australia, and together represent more than 550  
13 companies and associations on five continents.

14 My testimony has an eerie familiarity to  
15 Mr. Loveng's, so I'll try and be brief. The members of  
16 the council asked that I come here today to  
17 respectfully request that EPA issue a new supplemental  
18 rule that gives consideration to output-based  
19 approaches in calculating state NO<sub>x</sub> budgets.

20 One of the key messages that the council  
21 promotes is the idea of fuel neutrality and  
22 performance-based environmental regulation. Frankly,  
23 from a public policy perspective, it's not clear why  
24 the U.S. government would want to promote anything but  
25 output-based environmental regulation since the

6/3/04

1 putative objective of environmental policy is to reduce  
2 airborne emissions at the lowest total cost to society.

3 Environmental policy trends are now beginning  
4 to favor the ends rather than the means. Given the  
5 diversity of the energy industry and the ever-improving  
6 efficiencies of many energy generation technologies,  
7 this is a trend that should be encouraged. Council  
8 members often have said that an environmental policy  
9 should do three things: First, tell the industry where  
10 it needs to be; second, tell us when we need to get  
11 there; and then third, get out of the way, please.

12 While this oversimplifies the complexity of  
13 EPA's task, the underlying message is clear. If  
14 government creates incentives for cleaner and more  
15 productive energy generation, industry will respond.

16 What's not clear, however, is what public  
17 policy good is being served by removing the discussion  
18 of output-based standards from the agenda. Your May 11  
19 draft supplemental rule appropriately included this  
20 optional approach. Even if EPA believes that the  
21 input-based approach is more appropriate, it's  
22 certainly not the only approach that should be  
23 considered

24 Output-based regulation allows the market to  
25 make decisions about fuel choices, rather than favoring



6/3/04

1 one type of generation over another. An output-based  
2 approach is also more effective in incorporation  
3 externalities in the pricing of fuel choices and when  
4 done properly, an output-based approach would include  
5 all technology, not just central station thermal  
6 plants.

7 Output-based allocation creates a more powerful  
8 incentive to generate energy efficiently. In the 1999  
9 EPA report entitled, Economic Analysis of Alternative  
10 Methods of Allocating NO<sub>x</sub> Emission Allowances, the  
11 analysis concluded that an allocation system based on  
12 fuel input results in higher fuel use and higher  
13 emissions levels. That report can be found on the EPA  
14 website, and I've referenced the address in my written  
15 testimony.

16 The agency has made commitments over the past  
17 several years to consider output-based allocation  
18 methodologies, including a reference in the rule for  
19 Section 126. We believe the environmental and economic  
20 benefits of output regulatory standards are compelling.  
21 As an alternative that is being chosen by an increasing  
22 number of states and being considered in the U.S.  
23 Congress, at a minimum, a serious public policy  
24 discussion on its merits should be undertaken.

25 To conclude, we again request that EPA issue a

6/3/04

1 new supplemental rule proposal that gives consideration  
2 to an output-based or performance-based approach to  
3 calculating state NO<sub>x</sub> budgets. Thank you for your time  
4 this morning.

5 MR. NAPOLITANO: Thank you. Our next speaker  
6 this morning is Ms. Yvonne McIntyre for Calpine  
7 Corporation.

8 MS. McINTYRE: Good morning. My name is Yvonne  
9 McIntyre, and I'm director of federal regulations for  
10 Calpine Corporation. Calpine is a leading natural --  
11 North American power company dedicated to providing  
12 electricity from clean, efficient, natural gas-fired  
13 and geothermal energy centers. Calpine currently has  
14 88 energy centers in operation, representing about  
15 23,000 megawatts of generating capacity and is both the  
16 nation's largest producer of renewable geothermal  
17 energy and the nation's largest operator of combined  
18 heat and power, CHP, facilities. Another 14 additional  
19 energy facilities are under construction, and by the  
20 end of 2005, Calpine will be the country's seventh  
21 largest generator of electricity with more than 29,000  
22 megawatts of generating capacity.

23 Calpine submitted written comments on the EPA's  
24 originally proposed Clean Air Interstate Rule, formerly  
25 referred to as IAQR, that appeared in the Federal

6/3/04

1 Register on January 30, 2004. While I will not  
2 reiterate all the comments today, there are some that I  
3 would like to address.

4 Calpine agrees that significant reductions in  
5 NO<sub>x</sub> and SO<sub>2</sub> emissions from the power sector are  
6 required to reach attainment of the National Ambient  
7 Air Quality Standards, or NAAQS, for ground-level ozone  
8 and PM<sub>2.5</sub>. Calpine also agrees with the EPA that  
9 properly designed emissions trading programs can be the  
10 most cost-effective method to achieve emission  
11 reductions in conjunction with breakthroughs in  
12 efficiency from this sector.

13 Calpine believes that the most effective route  
14 to achieving a needed major reduction in air emissions  
15 is through comprehensive Clean Air Act revision  
16 legislation, specifically, as proposed in the Clean Air  
17 Planning Act of 2003. The Clean Air Planning Act would  
18 provide a comprehensive treatment of the emissions  
19 trading program, stricter regulation of NO<sub>x</sub>, SO<sub>2</sub>, and  
20 mercury, along with sensible regulation of CO<sub>2</sub>.

21 However, realizing that the legislative process  
22 is uncertain, Calpine recognizes that EPA must address  
23 the air quality issues associated with nonattainment of  
24 the new eight-hour ozone and PM<sub>2.5</sub> NAAQS. Therefore,  
25 Calpine supports EPA's action in promulgating the CAIR,

6/3/04

1 particularly in structuring it as a market-based  
2 program. In addition to achieving emissions goals for  
3 the regulated pollutants, a well-designed program can  
4 help to achieve other significant goals, including  
5 promoting generation efficiency and reducing uncapped  
6 emissions, include contributing to the voluntary  
7 reduction of greenhouse gas emissions.

8           With respect to the supplemental rule proposal  
9 recently released by EPA, Calpine is pleased that EPA  
10 provides credit for the thermal output of cogeneration,  
11 or CHP, facilities. In Calpine's original comments, we  
12 supported the inclusion of output-based allocation for  
13 thermal output from CHP. Credit for CHP will provide a  
14 significant incentive for this highly efficient form of  
15 energy generation. An input-based system will not  
16 appropriately accommodate CHP since it disregards the  
17 efficiency of the cogeneration of the thermal energy.  
18 The CAIR supplemental rule, taking the same approach as  
19 the new mercury SNPR, includes updating allocations for  
20 new units based on output with credit for cogeneration.  
21 While this approach does not go as far as Calpine would  
22 like, we see it as a significant advance over past EPA  
23 proposals and are encouraged that EPA has moved in this  
24 direction.

25           On another issue, however, Calpine is, like

6/3/04

1 those in line today, express our disappointment that  
2 EPA decided to omit discussion of an output-based  
3 allocation method for establishing state NO<sub>x</sub> budgets  
4 from the CAIR supplemental rule. As previously noted,  
5 a May 11 draft of the proposed supplemental rule that  
6 was sent to OMB for review included discussion of the  
7 output-based method for allocating allowances to  
8 plants. Along with my written testimony, I am  
9 submitting for the record a copy of the May 11 draft  
10 version of Section II of the preamble of the proposed  
11 supplemental rule.

12 In comments on the original proposed rule,  
13 Calpine recommended that the state budgets in the CAIR  
14 be based on generation output criteria and that EPA  
15 promote the concept of output-based allowance  
16 allocations to affected sources in its model trading  
17 rule. Allocation based on output encourages the  
18 construction and operation of more efficient plants.  
19 The principle of an allowance trading program is to  
20 monetize emissions and allow plant operators to  
21 determine the most cost-effective way of meeting the  
22 limit through technology, fuel choice, or emissions  
23 trading. This allows the market, not the regulators,  
24 to determine the most cost-effective business response  
25 to meeting the new air quality standards. An

6/3/04

1 output-based trading program levels the playing field  
2 between those who have already invested in controls or  
3 in low-emitting technology and those who will need to  
4 invest in the future. While the language in the May 11  
5 draft addressed the output-based method for fossil  
6 generation only, we believe that it should apply to all  
7 affected units regardless of fuel, vintage, or  
8 technology.

9           There is an increasing recognition by  
10 policymakers that output-based regulation is an  
11 important method of rewarding and encouraging  
12 efficiency. As previously noted, EPA considered  
13 recommending output-based allocations late in the  
14 development of the NO<sub>x</sub> SIP Call rule. A judgment was  
15 made that it was too late in the process to change to  
16 an output-based approach. But EPA made the commitment  
17 to apply an output-based approach in the second round  
18 of the Section 126 trading program. In 1999, EPA  
19 convened an Updating Output Emission Limitation  
20 Workshop -- Workgroup to work through perceived  
21 problems in implementing an output-based emissions  
22 trading program. Based on the input received from this  
23 workgroup, EPA published a guidance document for states  
24 participating in the NO<sub>x</sub> Budget Trading Program under  
25 the NO<sub>x</sub> SIP Call entitled, Developing and Updating

6/3/04

1 Output-Based NO<sub>x</sub> Allowance Allocations. Numerous  
2 states have adopted the output-based method for  
3 allowances -- method for allocating of allowances in  
4 their state NO<sub>x</sub> SIP Call allocations, and these  
5 programs are proving effective and easy to administer.

6 Considering the clear policy benefits  
7 associated with output-based approach, Calpine  
8 respectfully requests that EPA issue a supplemental  
9 notice regarding the addition of the May 11 draft  
10 language to the record and soliciting comments on the  
11 output-based approach. We strongly believe that  
12 opportunity for public review and comment on this  
13 important issue should be provided. Calpine will be  
14 submitting more detailed comments on the supplemental  
15 rule and proposal in its written comments to the  
16 agency. Thank you.

17 MR. NAPOLITANO: Thank you. Any questions?  
18 Did you give the registration desk a copy?

19 MS. McINTYRE: Yes, I did.

20 MR. NAPOLITANO: Thank you very much.

21 MS. McINTYRE: Last name, M-c, capital "I",  
22 n-t-y-r-e.

23 MR. NAPOLITANO: The next speaker on the agenda  
24 is Mr. Kenneth Carroll from Entergy Corporation, if he  
25 is here. We will wait for Mr. Carroll to join us

6/3/04

1       sometime in the morning or early afternoon. And the  
2       next person who will be on our agenda is Mr. Jim Moore.

3               MR. MOORE: James C. Moore, II. M-o-o-r-e. I  
4       apologize. I just made this up this morning. I don't  
5       have a transcription for you.

6               Just basically, I'm here and I wanted to talk a  
7       little bit. I really came to listen. I want to thank  
8       you for curing my insomnia. This is the proposal, and  
9       it didn't include mercury, so it kept me busy. I also  
10      want to thank EPA for the people that work for you,  
11      people like Melanie and Alex Salpeter and Paula Branch  
12      and Kennan Smith. They make my job a lot easier. They  
13      have done, with what they've done with the accounting  
14      system and how we keep track of allowances makes my job  
15      as a trader a lot easier. I thank you for that.

16              I also want to mention now how far we've come.  
17      What a lot of people get lost in this debate is, is how  
18      clear the air has become over the past 50 years. My  
19      grandma told me when I was younger that when she was a  
20      girl in St. Louis, the, in the middle of winter, the  
21      air was so dirty, you couldn't see. The lights were on  
22      in the middle of the day because we burn coal for heat  
23      in St. Louis. I'm sure that's the same here on the  
24      East Coast. So you guys, EPA, has done a commendable  
25      job in getting us to where we are today, and I thank



6/3/04

1 you for that.

2 I was in Moscow a year ago in February, and  
3 they're still putting it out. I mean, you can stand  
4 by, in Red Square there's a power plant across the  
5 river and it's just belching it out. So you guys have  
6 done a great job.

7 But there's room for improvement, and that's  
8 where the Clean Air Interstate Rule comes in. And I  
9 want to make a few comments on that, but one of my  
10 favorite quotes is Sir Isaac Newton said a long time  
11 ago, I've seen further by standing on the shoulders of  
12 giants. And you guys have put us on the shoulders of  
13 giants to get us where we are today.

14 It refers, on page 15, you talk about from a  
15 trading viewpoint, do we use three tons in 2015 or  
16 later, or do you do it at 2.86? At first, I saw that,  
17 I was like, well, how am I going to trade a 0.86 of a  
18 ton? And then as I got thinking about it, we trade in  
19 2500-ton blocks, so that's not a problem.

20 And I would encourage the 2.86 tons in that if  
21 you use three and give the rest to the states, it  
22 becomes a political thing, and we're going to spend a  
23 lot of effort going back and forth in Illinois and  
24 Missouri, which is where we operate, to try to  
25 determine what do you do with those extra fractions of

6/3/04

1 allowance. And I would encourage to use the 2.86 for  
2 that reason. It keeps it simple, and we don't have to  
3 take our time and everybody else's time arguing over  
4 what we do with the extra. It makes your life  
5 difficult, I guess, because I'm not sure how you track  
6 that with a serial number system. And right now, it's  
7 pretty simple. I can keep track of every single  
8 allowance I have and where it came from and where it  
9 went and when I did it. And I'm not sure how that  
10 worked out, and I look forward to seeing how you guys  
11 will do that.

12 I'd like to echo what some other people have  
13 said. We in the utility industry, and you've heard  
14 this before and it's outside of your control, all the  
15 legislative things that takes into account everything,  
16 because right now, we're operating in a, we're trying  
17 to figure out what to do. And we have to decide now  
18 what we are going to do now in 2008, -9, and -10.

19 We're spending a lot of time with our  
20 engineering staff and Sargent Allendi and others trying  
21 to figure out what controls we put on which unit when  
22 we put them, because it takes, three, four, five years  
23 to do this. And we can't put them all on at the same  
24 time. We can't put an SCR on every one of our units in  
25 one year. It's a two-year outage schedule. We have to

6/3/04

1 plan these things way in advance. So I encourage us  
2 to, whatever we end up doing to fix the rules and keep  
3 them steady for quite a while.

4 Early reduction, I wanted to make sure you --  
5 the elimination of the flow control, which is stated in  
6 your proposal is beneficial from a trading viewpoint.  
7 It makes my job a lot easier. Right now, flow control  
8 complicates things unnecessarily, in my opinion. And  
9 it would make it a lot easier if we knew that a NO<sub>x</sub> ton  
10 today is worth a ton tomorrow and the next day and the  
11 day after that, similar to the way SO<sub>2</sub> is right now.

12 One thing that hasn't been mentioned and I  
13 think it might have to be a legislative fix is the  
14 annual auction, the EPA auction in March every year. I  
15 would encourage elimination of that. It's, it was put  
16 in place initially to ensure that allowances were  
17 available to people that needed them for the fear that  
18 there would not be a market. But the market has  
19 developed into there, and it's pretty efficient. I  
20 can't say it's super liquid, but it's there and people  
21 will be able to get allowances if they need them. So  
22 if that could be eliminated, I would encourage that.

23 I feel that -- there's been a full-court press  
24 on changing the allocation system today. I just wanted  
25 to mention another side of it. I would caution you on

6/3/04

1 changing the allocation system in that it would give a  
2 windfall profit to entities that haven't spent the  
3 money. At AMRON, we spent several hundred million  
4 dollars to comply with the Clean Air Act Amendments of  
5 1990, and my manager tells me we're looking forward  
6 to -- not looking forward to it, but we think we're  
7 going to spend about a billion dollars by the mercury  
8 rules and the Clean Air Interstate Rules. If we have  
9 to spend a billion dollars to put controls on our units  
10 and then have to go spend another several hundred  
11 million dollars to buy allowances to comply, it's going  
12 to be a massive redistribution of wealth in this  
13 country from areas that have spent the money to clean  
14 up their units to areas that just happen to have  
15 different kinds of generation. So I caution you on  
16 that.

17 I would also like to encourage you, the EPA and  
18 Congress, that we have come a long, long way in this  
19 cleaning up the air in the states and we've done a  
20 great job in the electric generating utilities of doing  
21 that. I would encourage you to look elsewhere. You  
22 are, you have done some work with off-road diesel and  
23 other areas. Transportation, I think, needs to be  
24 looked at.

25 And the big opportunity, in my opinion, is

6/3/04

1 overseas. Like I said before, Moscow, if we could,  
2 spend a billion dollars in Moscow and in China and just  
3 make light-years of improvements in air quality. And  
4 I've read recently that 50 percent of mercury that's  
5 deposited in the States comes from overseas. And the  
6 amount of bang for our buck we could get overseas is  
7 huge. And I realize that's outside of your control,  
8 but I just want to encourage it in that regard. Thank  
9 you very much.

10 MR. NAPOLITANO: Thank you. Any questions?  
11 Thank you very much. At this point, Ken has arrived.  
12 Is Mr. Kenneth Carroll here? Okay. Well, at this  
13 point, all the speakers that were slated this morning  
14 that are here have spoken. The next speaker was to be  
15 Kris Knudsen, Duke Energy. I don't know if he happens  
16 to be here and perhaps wants to catch an earlier  
17 flight. You can speak now, if you'd like. Well, at  
18 this point, we're in session waiting for speakers.

19 We think it would be a reasonable thing to do  
20 at this point with no speakers on the docket is to go  
21 ahead and take a 20-minute break. And we will then  
22 come back and see if anybody has come by 11. Then go  
23 from 11 to 12, and then unless Mr. Knudsen has come  
24 here from Duke, we will basically adjourn for lunch  
25 from 12 to 1:30 and then be available in the afternoon.

6/3/04

1 So we will take a break until 11 at this point and then  
2 reconvene to see if anybody else has joined us to talk.  
3 Thank you.

4 (A recess was taken from 10:40 a.m. until  
5 11:00 a.m.)

6 MR. NAPOLITANO: Good morning. We still have a  
7 lack of speakers, so we're going to remain in recess  
8 but stay here until noon, at which point, then, we'll  
9 go to lunch till 1:30. So we'll be available, should  
10 somebody register to speak, we will call ourselves back  
11 into session between now until noon. And I'll announce  
12 if somebody is here, if you want to get up and just be  
13 in microphone range. . .

14 (A recess was held from 11:00 a.m. until  
15 1:30 p.m.)

16 MR. NAPOLITANO: Good afternoon, and welcome  
17 back to the public hearing on the SNPR for the Clean  
18 Air Interstate Rule. We would like to start now with  
19 the first speaker scheduled for the afternoon and then  
20 we can then move to Kenneth -- excuse me. Yeah,  
21 Kenneth Carroll, if he's arrived or anybody else that  
22 has come in that has signed up. But the next speaker  
23 on the docket would be Kris Knudsen from Duke Energy.  
24 Please come on up and join us and give us your  
25 testimony, please.

6/3/04

1 MR. KNUDSEN: Okay. Thank you. I guess I'll  
2 stand here at this microphone.

3 MR. NAPOLITANO: Basically, if you'll just  
4 ballpark, talk about ten minutes, a little longer, if  
5 you'd like given that, the time available that we have.  
6 This clock is not working. We've had clock problems  
7 all day.

8 MR. KNUDSEN: I'm not sure if I'll take ten  
9 minutes, but we'll go forth and see where it goes.

10 MR. NAPOLITANO: Yes. Do you want me to  
11 introduce the panel to you, or do you know?

12 MR. KNUDSEN: If anybody else needs the panel  
13 introduced.

14 MR. NAPOLITANO: Most people were here this  
15 morning, so. . .

16 MR. KNUDSEN: I think that would be all right,  
17 then. We don't need to really. . .

18 Well, thank you. My name, again, is Kris  
19 Knudsen. I'm representing Duke Energy. I'm a senior  
20 technical consultant for Duke Energy Corporation for  
21 air quality regulations for basically about 25 years  
22 now.

23 We at Duke are generally supportive of EPA's  
24 approach to applying cap-and-trade program to address  
25 the future emissions reduction requirements. However,

6/3/04

1 we have continuing concerns with the technical and  
2 scientific bases of the proposed SO<sub>2</sub> and NO<sub>x</sub>  
3 requirements of the EPA's Clean Air Interstate Rule.  
4 And further, we believe the proposed SO<sub>2</sub> trading  
5 program, which is described in the supplemental notice,  
6 is not equitable, is contrary to law, and it clearly  
7 violates specific provisions of the Title IV Clean Air  
8 Act.

9 Duke Energy provided comments on the proposed  
10 Clean Air Interstate Rule, or the Interstate Air  
11 Quality Rule, as it was known at the time, back on  
12 February 6 in the snowstorm at Research Triangle Park.  
13 And we followed up with detailed written comments on  
14 March 30. Our comments describe specific legal,  
15 regulatory, and technical concerns we had with EPA's  
16 proposal with, particularly, the proposed method of  
17 allocating the SO<sub>2</sub> allowances. However, rather than  
18 simply complaining that the rule was unfair or illegal,  
19 we went on to provide an alternative that would leave  
20 Title IV whole while allowing a separate program to  
21 achieve the purpose of the Clean Air Interstate Rule,  
22 mainly to create a SIP-based program to address fine  
23 particulate and ambient standards.

24 We are very disappointed that the decision was  
25 made ultimately to exclude from the supplemental notice



6/3/04

1 all mention of alternatives to the proposal to use  
2 Title IV SO<sub>2</sub> allowances as the basis for allocation  
3 under the Clean Air Interstate Rule. Rather than  
4 enhancing the public's opportunity to consider  
5 alternatives, the supplemental notice therefore has  
6 taken options off the table and deprived the public  
7 from the opportunity to consider valid alternatives  
8 that were offered during the comment period on the  
9 original proposal.

10 We think this is most unfortunate and  
11 unreasonable, and we urge EPA to correct this mistake.  
12 We call on EPA to immediately issue a revised  
13 supplemental notice that includes the full discussion  
14 of alternative SO<sub>2</sub> allocation methodology and then  
15 solicit public comment on those. EPA has no pressing  
16 deadline or binding schedule to complete this rule  
17 making, so EPA should take the time to seek more input  
18 and to more carefully consider a broader range of  
19 alternatives. Revising the supplemental notice will  
20 allow this additional input in the most expedient  
21 manner.

22 As EPA has acknowledged, the proposed  
23 allocations to states based on Title IV allowances does  
24 not account for any of the significant changes in the  
25 power sector that have occurred since 1987. Such

6/3/04

1 changes include differences in demand growth, changes  
2 in fuel, additional regulatory requirements, and  
3 construction of new units. These changes make use of  
4 Title IV allowances entirely inappropriate for purposes  
5 of a new and unrelated program. Under EPA's approach,  
6 entities in each state would essentially be regulated  
7 to different and widely varying emissions standards.  
8 The alternative approach that Duke Energy has  
9 recommended would eliminate this inequity.

10 In addition, I'd like to mention that our  
11 approach retains the input-based system in comparison  
12 to other output-based approaches that others have been  
13 advocating. EPA has also acknowledged that it cannot  
14 change statutory requirements. However, EPA's proposal  
15 would change Title IV in fundamental ways and is  
16 clearly contrary to specific provisions of the law.  
17 That could subject the final rule to legal challenge,  
18 which could delay or undermine the EPA's regional SO<sub>2</sub>  
19 reduction goals. Such delay may also undermine EPA's  
20 proposed mercury cap-and-trade program. Duke Energy's  
21 recommendation to EPA has been to keep the Title IV  
22 program and the Clean Air Interstate Rule entirely  
23 separate to avoid the statutory concerns and to allow  
24 each program to achieve its own goals.

25 We will be submitting additional written

6/3/04

1 comments once the supplemental notice does appear in  
2 the Federal Register. Our comments will also be  
3 addressing continuing concerns we have with other  
4 aspects of the program, particularly the NO<sub>x</sub> program.  
5 We remain concerned about the lack of a growth factor  
6 adjustment for the NO<sub>x</sub> rule and also the lack of a  
7 provision for early reduction credits.

8 But once again, we urge EPA to immediately look  
9 at this issue again and issue a revised supplemental  
10 notice that identifies and invites public comment on  
11 alternatives to EPA's proposed SO<sub>2</sub> allocation program.  
12 We look forward to the opportunity to provide more  
13 meaningful input on alternatives that may allow EPA to  
14 develop a successful program to achieve the stated  
15 goals. And that concludes my remarks. Thank you.

16 MR. NAPOLITANO: Thank you, Kris. Does anybody  
17 have clarifying questions? Thank you very much for  
18 joining us.

19 MR. KNUDSEN: You're very welcome. Thanks.

20 MR. NAPOLITANO: Now, by any chance, is Kenneth  
21 Carroll here? Is there anybody else in the audience  
22 who has signed up to speak or would like to speak?  
23 What we'd like to do is something we did this morning,  
24 which is we'll go into recess until somebody comes to  
25 want to speak and be sitting here at the table and then

6/3/04

1 call the session back into action when we have speakers  
2 come out throughout the afternoon.

3 We will be here till five, and we'll be  
4 available to listen as people come and, you know,  
5 basically, from the microphone let people know that  
6 we've got additional speakers as they arrive. But  
7 otherwise, we're going to sit in recess until somebody  
8 does come or five o'clock, whichever comes first.  
9 Thank you.

10 (A recess was held from 1:37 p.m. until  
11 5:00 p.m.)

12 MR. NAPOLITANO: It is now five o'clock. There  
13 are no other speakers present. I would like to close  
14 the hearing of the SNPR of the Clean Air Interstate  
15 Rule.

16 (The hearing concluded at 5:00 p.m.)  
17  
18  
19  
20  
21  
22  
23  
24  
25

6/3/04

STATE OF NORTH CAROLINA

COUNTY OF DURHAM

## C E R T I F I C A T E

I, Susanne M. Newman, Notary Public/  
Court Reporter, before whom the foregoing public  
hearing was conducted, do hereby certify that the  
witnesses whose unsworn testimony appears in the  
foregoing public hearing was taken down by me to the  
best of my ability and thereafter transcribed under my  
supervision and that I am neither counsel for nor  
employed by the agency conducting this hearing.

---

Susanne M. Newman, Notary Public

My commission expires: September 24, 2005