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April 15, 2015

VIA ELECTRONIC FILING

Mr. Mark Langer
Clerk of the Court
United States Court of Appeals for the District of Columbia Circuit
E. Barrett Prettyman United States Courthouse
333 Constitution Avenue, N.W. Washington, D.C. 20001

Re: *West Virginia v. EPA*, No. 14-1146; *In re Murray Energy*, Nos. 14-1112
and 14-1151 (consolidated with 14-1112).

Dear Mr. Langer,

The States opposing the Environmental Protection Agency (“EPA”) in these related cases submit this letter pursuant to Federal Rule of Appellate Procedure 28(j), to notify the Court of remarks made during a symposium held on April 10, 2015, at the Energy Policy Institute at Chicago (“EPIC”).

During that event, Gina McCarthy, Administrator of the EPA, declared: “[*The Section 111(d) Rule*] is going to happen. We have the legal—not just right and authority but responsibility—to do it.” Ex. A, at *1. At the same event, Doug Scott, vice president of the Great Plains Institute for Sustainable Development, added: “I think states really are putting in the work on this right now. I’ve seen a lot of states that are buckling down and working on the plan. At Great States we’re working with a number of states that are doing that, most of whom frankly oppose

the rule.” *Id.* at *2. And the director of EPIC emphasized: “I think the impact of the [Section 111(d) Rule] can’t be overstated. It completely was a game changer. My view is that it led to the agreement with China in November. It led to China agreeing to reduce carbon emissions. The consequence was that it changed how people thought about what could possibly happen in Paris and that the world might actually begin to confront climate change in a meaningful way.” *Id.* at *2-3.

These comments—especially those of Administrator McCarthy—further refute the assertions made EPA’s attorneys in these cases that the agency is genuinely considering whether to finalize the Rule. As McCarthy explained, EPA has already concluded it has the “legal . . . authority” to regulate power plants under Section 111(d), notwithstanding its regulation of those plans under Section 112, and thus “[the Section 111(d) Rule] is going to happen.” McCarthy’s comments, as well as the comments by EPIC’s director, are also consistent with the Obama Administration’s recent submission to the 2015 United Nations Climate Change Conference to be held in Paris, in which the United States committed to “finaliz[ing]” the Section 111(d) Rule “by summer 2015.” Ex. B, at *5.

Dated: April 15, 2015

Respectfully submitted,

/s/ Elbert Lin

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cc: All Counsel of Record via CM/ECF

CERTIFICATE OF SERVICE

I certify that on this 15th day of April, 2015, a copy of the foregoing Federal Rule of Appellate Procedure 28(j) Letter was served electronically through the Court's CM/ECF system on all registered counsel.

/s/ Elbert Lin

Elbert Lin

EXHIBIT A

**Jeff McMahon** Contributor*I cover green technology, energy and the environment from Chicago.*

Opinions expressed by Forbes Contributors are their own.

TECH 4/12/2015 @ 8:33AM | 2,111 views

States Ignoring Mitch McConnell, Working On Clean Power Plan: EPA

[Comment Now](#)

Last month Senate Majority Leader Mitch McConnell urged states to ignore the Environmental Protection Agency's Clean Power Plan, but the states are ignoring McConnell and working toward compliance, EPA Administrator Gina McCarthy said Friday at the University of Chicago.

[Even states that are suing the EPA are preparing carbon-reduction plans](#), another official said, to meet their obligations under EPA's proposed rule, which McCarthy guaranteed will be implemented and predicted will surpass its stated goals.

"It is going to happen," McCarthy told about 120 people gathered at the University of Chicago Booth School of Business and another 200 watching online. "We have the legal—not just right and authority but responsibility—to do it. People expect us to do it. I don't see any utility thinking we're not going to do it. So the politics are one thing and reality is another."

The Clean Power Plan sets carbon emission goals for each state, allowing states to decide how they will reach them. The plan is designed to help the U.S. meet the Obama Administration's pledge of a 28 percent reduction in carbon emissions by 2030—on track to an 83 percent reduction by 2050.

"I fully expect that what we're expecting for reductions in 2030 will be much higher by the time we get there," McCarthy said.

Newly installed as majority leader, Sen. McConnell (R-KY) sent a [letter](#) march 19 to all 50 of the nation's governors urging them to ignore EPA's mandate that states submit their carbon-reduction plans this summer.

"I hope you will carefully review the consequences before signing up for this deeply misguided plan," McConnell writes. "I believe you will find, as I have, that the EPA's proposal goes far beyond its legal authority and that the

courts are likely to strike it down.... Given the dubious legal rationale behind the EPA's demands, rather than submitting plans now, states should allow the courts to rule on the merits of the CPP."

EPA officials have been meeting behind closed doors with energy and environmental regulators from the states, McCarthy said, and the tenor of those meetings suggests McConnell's letter had no effect.

"We're not having the contention in closed-door meetings that you would expect to see if you thought that Mitch McConnell's effort was going to be successful."

McCarthy characterized the EPA's meetings with states as "more robust and more engaging than in any rule that we have ever had," and she said they are proceeding as robustly now as before McConnell mailed his letter.

Another player in the negotiations backed McCarthy's account.

"I think states really are putting in the work on this right now," said [Doug Scott](#), vice president of the Great Plains Institute for Sustainable Development, which helps states transition to clean energy. "I've seen a lot of states that are buckling down and working on the plan. At Great States we're working with a number of states that are doing that, most of whom frankly oppose the rule. So I think they're doing their due diligence and pursuing the plan B if the legal challenges don't succeed."

Thirteen states have [sued](#) the EPA, challenging the agency's authority to compel them to reduce carbon emissions. It's telling, Scott said, that even those states are preparing for their lawsuit to fail.

If states do not submit compliance plans, the EPA will impose federal plans upon them. Some states may let that happen for political reasons, preferring an EPA-imposed rule to their own, Scott said. Others may opt for the federal plan simply because it's workable.

McCarthy appeared with Scott at "The Next Frontier of Climate Change," a discussion of state and local actions hosted by the New Republic magazine and the [Energy Policy Institute at Chicago \(EPIC\)](#).

EPIC director [Michael Greenstone](#) emphasized the international importance of the Clean Power Plan.

"I think the impact of the Clean Power Plan can't be overstated," said Greenstone, a former Obama economic advisor who also serves as the Milton Friedman Professor in Economics at the University of Chicago. "It completely was a game changer. My view is that it led to the agreement with China in November. It led to China agreeing to reduce carbon emissions. The

consequence was that it changed how people thought about what could possibly happen in Paris and that the world might actually begin to confront climate change in a meaningful way.

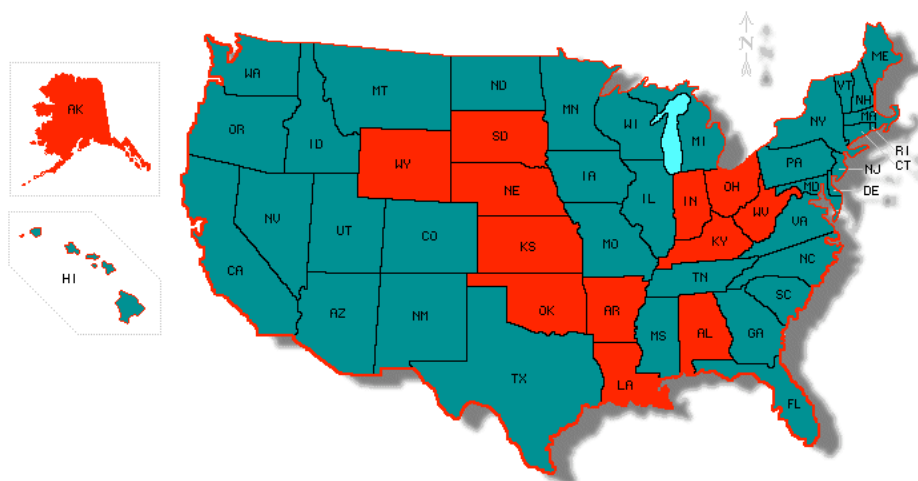
“ So the Paris Conference—the world doing something about climate change—it all really turns on the Clean Power Plan . And now what does the Clean Power Plan depend on? It depends on states implementing what’s in it.”

Read More:

[Americans Want America To Run On Solar and Wind](#)

[EPA: We’re Not Picking Fuels!](#)

[To Undermine Paris Climate Talks, Stop EPA Clean Power Plan](#)



The states in red are suing the EPA, challenging the agency’s authority to force them to reduce carbon emissions.

Follow Jeff McMahon on [Facebook](#), [Google Plus](#), [Twitter](#), or email him [here](#).

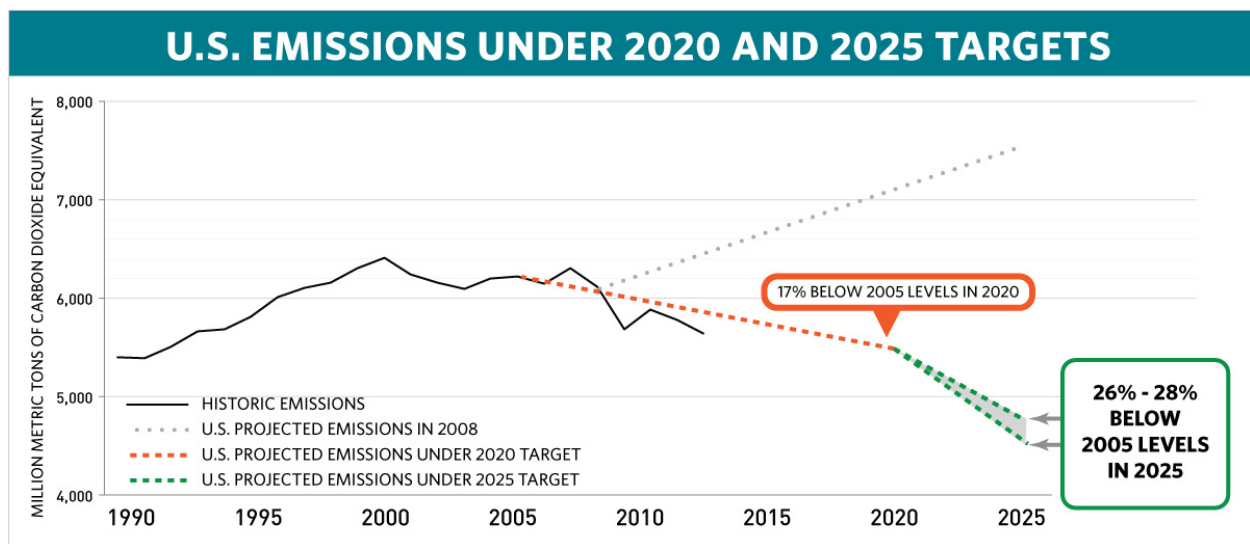
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EXHIBIT B

The United States is pleased to communicate its intended nationally determined contribution, as well as information to facilitate the clarity, transparency, and understanding of the contribution.

The United States is strongly committed to reducing greenhouse gas pollution, thereby contributing to the objective of the Convention. In response to the request in Lima to communicate to the secretariat its intended nationally determined contribution towards achieving the objective of the Convention as set out in its Article 2—the stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system—the United States intends to achieve an economy-wide target of reducing its greenhouse gas emissions by 26-28 per cent below its 2005 level in 2025 and to make best efforts to reduce its emissions by 28%.



The target is fair and ambitious. The United States has already undertaken substantial policy action to reduce its emissions, taking the necessary steps to place us on a path to achieve the 2020 target of reducing emissions in the range of 17 percent below the 2005 level in 2020. Additional action to achieve the 2025 target represents a substantial acceleration of the current pace of greenhouse gas emission reductions. Achieving the 2025 target will require a further emission reduction of 9-11% beyond our 2020 target compared to the 2005 baseline and a substantial acceleration of the 2005-2020 annual pace of reduction, to 2.3-2.8 percent per year, or an approximate doubling.

Substantial global emission reductions are needed to keep the global temperature rise below 2 degrees Celsius, and the 2025 target is consistent with a path to deep

decarbonization. This target is consistent with a straight line emission reduction pathway from 2020 to deep, economy-wide emission reductions of 80% or more by 2050. The target is part of a longer range, collective effort to transition to a low-carbon global economy as rapidly as possible.

The target reflects a planning process that examined opportunities under existing regulatory authorities to reduce emissions in 2025 of all greenhouse gases from all sources in every economic sector. A number of existing laws, regulations, and other domestically mandatory measures are relevant to the implementation of the target, which we detail in the information provided.

Party: United States of America

Intended nationally determined contribution

The United States intends to achieve an economy-wide target of reducing its greenhouse gas emissions by 26%-28% below its 2005 level in 2025 and to make best efforts to reduce its emissions by 28%.

Information provided in order to facilitate clarity, transparency, and understanding

Scope and coverage:

Gases:

The U.S. target covers all greenhouse gases included in the 2014 Inventory of United States Greenhouse Gas Emissions and Sinks: carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), perfluorocarbons (PFCs), hydrofluorocarbons (HFCs), sulfur hexafluoride (SF₆), and nitrogen trifluoride (NF₃).

Sectors:

The U.S. target covers all IPCC sectors.

Percentage of total greenhouse gas emissions:

The United States intends to account for 100 percent of U.S. greenhouse gas emissions and removals for the base year 2005 as published in the Inventory of United States Greenhouse Gas Emissions and Sinks, on a net-net basis.

Quantifiable information on the reference point, time frames, assumptions and methodological approaches including those for estimating and accounting for anthropogenic greenhouse gas emissions and removals:

Timeframe and reference point:

The U.S. target is for a single year: 2025. The base year against which the target is measured is 2005.

Accounting approach for land sector:

The United States intends to include all categories of emissions by sources and removals by sinks, and all pools and gases, as reported in the Inventory of United States Greenhouse Gas Emissions and Sinks; to account for the land sector using a net-net approach; and to use a “production approach” to account for harvested wood products consistent with IPCC guidance. The United States may also exclude emissions from natural disturbances, consistent with available IPCC guidance.

There are material data collection and methodological challenges to estimating emissions and removals in the land sector. Consistent with IPCC Good Practice, the United States has continued to improve its land sector greenhouse gas reporting, which involves updating its methodologies. The base year and target for the U.S. INDC were established on the basis of the methodologies used for the land sector in the 2014 Inventory of United States Greenhouse Gas Emissions and Sinks and the United States 2014 Biennial Report.

Metric:

The United States intends to use 100-year global warming potential (GWP) values to calculate CO₂ equivalent totals. The United States intends to report emissions totals using Fourth Assessment Report values, and will consider future updates to GWP values from the IPCC.

Use of markets:

At this time, the United States does not intend to utilize international market mechanisms to implement its 2025 target.

Domestic laws, regulations, and measures relevant to implementation:

Several U.S. laws, as well as existing and proposed regulations thereunder, are relevant to the implementation of the U.S. target, including the Clean Air Act (42 U.S.C. §7401 et seq.), the Energy Policy Act (42 U.S.C. §13201 et seq.), and the Energy Independence and Security Act (42 U.S.C. § 17001 et seq.).

Since 2009, the United States has completed the following regulatory actions:

- Under the Clean Air Act, the United States Department of Transportation and the United States Environmental Protection Agency adopted fuel economy standards for light-duty vehicles for model years 2012-2025 and for heavy-duty vehicles for model years 2014-2018.
- Under the Energy Policy Act and the Energy Independence and Security Act, the United States Department of Energy has finalized multiple measures addressing buildings sector emissions including energy conservation standards for 29 categories

of appliances and equipment as well as a building code determination for commercial buildings.

- Under the Clean Air Act, the United States Environmental Protection Agency has approved the use of specific alternatives to high-GWP HFCs in certain applications through the Significant New Alternatives Policy program.

At this time:

- Under the Clean Air Act, the United States Environmental Protection Agency is moving to finalize by summer 2015 regulations to cut carbon pollution from new and existing power plants.
- Under the Clean Air Act, the United States Department of Transportation and the United States Environmental Protection Agency are moving to promulgate post-2018 fuel economy standards for heavy-duty vehicles.
- Under the Clean Air Act, the United States Environmental Protection Agency is developing standards to address methane emissions from landfills and the oil and gas sector.
- Under the Clean Air Act, the United States Environmental Protection Agency is moving to reduce the use and emissions of high-GWP HFCs through the Significant New Alternatives Policy program.
- Under the Energy Policy Act and the Energy Independence and Security Act, the United States Department of Energy is continuing to reduce buildings sector emissions including by promulgating energy conservation standards for a broad range of appliances and equipment, as well as a building code determination for residential buildings.

In addition, since 2008 the United States has reduced greenhouse gas emissions from Federal Government operations by 17 percent and, under Executive Order 13693 issued on March 25th 2015, has set a new target to reduce these emissions 40 percent below 2005 levels by 2025.

Relationship with inventory:

This approach, and the definitions and metrics used, are fully consistent with our greenhouse gas inventory. The United States intends to continue to improve its greenhouse gas inventory over time, and may incorporate these improvements into its intended nationally determined contribution accordingly. Additional information on the greenhouse gas inventory, including calculations, models, data sources, and references can be found here:

www.epa.gov/climatechange/ghgemissions/usinventoryreport.html#about