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March 19, 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 recent public remarks made by Gina McCarthy, Administrator of the EPA, before the Counsel of Foreign Relations:

There is no silence between us and States [regarding the Section 111(d) rule]. I see no effort for States to be pulling away from the engagement. And it is incredibly robust. I am happy to leave it to the States . . . who think that the best thing is for States to put their heads in the sand, and pretend like EPA isn’t going to regulate. *EPA is going to regulate. Mid-summer is when the [Rule] is going to be finalized*

<http://www.cfr.org/environmental-policy/conversation-us-environmental-protection-agency-administrator-gina-mccarthy/p36257> (beginning at 54:03) (emphasis derived from video).

McCarthy's emphatic statements belie the made-for-litigation fiction—central to EPA's defense in all of these cases—that EPA might abandon the Section 111(d) rulemaking. The statements leave no doubt that EPA is not open to, and will not be, changing its conclusion that it *can and will* regulate the same power plants under both Section 111(d) and Section 112. EPA “is going to regulate” under Section 111(d), it will do so “mid-summer,” and States should not “put their heads in the sand[] and pretend like EPA isn't going to regulate.”

These statements further demonstrate the urgent need for this Court to grant relief in these related cases now, rather than waiting until the inevitable challenge in this Court when EPA follows through on its threats this summer. Unlike what occurs in ordinary rulemaking, McCarthy's statements are part of a uniquely consistent pattern of similar public commitments by EPA regarding the inevitability of the final Section 111(d) rule. They also highlight the ongoing harms the States and their citizens are suffering as they expend significant resources—what McCarthy describes as “incredibly robust” “engagement”—to prepare for a rule that, by its own terms, seeks to alter the entire electricity sector. These extraordinary circumstances warrant judicial action now.

Dated: March 19, 2015

Respectfully submitted,

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cc: All Counsel of Record via CM/ECF

CERTIFICATE OF SERVICE

I certify that on this 19th day of March, 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