



State of West Virginia
Office of the Attorney General

Patrick Morrissey
Attorney General

(304) 558-2021
Fax (304) 558-0140

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

Patrick Morrissey

Attorney General of West Virginia

Elbert Lin

Solicitor General

Counsel of Record

Misha Tseytlin

General Counsel

J. Zak Ritchie

Assistant Attorney General

State Capitol Building 1, Room 26-E

Charleston, WV 25305

Tel. (304) 558-2021

Fax (304) 558-0140

Email: elbert.lin@wvago.gov

Counsel for Intervenor-Petitioner State of West Virginia

/s/ Andrew Brasher

Luther Strange
Attorney General of Alabama
Andrew Brasher
Solicitor General
Counsel of Record
501 Washington Ave.
Montgomery, AL 36130
Tel. (334) 590-1029
Email: abrasher@ago.state.al.us
***Counsel for Intervenor-Petitioner State of
Alabama***

/s/ Steven E. Mulder

Craig W. Richards
Attorney General of Alaska
Steven E. Mulder
Senior Assistant Attorney General
Counsel of Record
P.O. Box 110300
Juneau, Alaska 99811
(907) 465-3600
***Counsel for Intervenor-Petitioner State of
Alaska***

/s/ C. Joseph Cordi, Jr.

Leslie Rutledge
Attorney General of Arkansas
C. Joseph Cordi, Jr.
Senior Assistant Attorney General
Counsel of Record
Jamie L. Ewing
Assistant Attorney General
323 Center Street, Ste. 400
Little Rock, AR 72201
Tel. (501) 682-5310
Email: joe.cordi@arkansasag.gov
***Counsel for Intervenor-Petitioner State of
Arkansas***

/s/ Timothy Junk

Gregory F. Zoeller
Attorney General of Indiana
Timothy Junk
Deputy Attorney General
Counsel of Record
Indiana Government Ctr. South, Fifth Floor
302 West Washington Street
Indianapolis, IN 46205
Tel. (317) 232-6247
Email: tom.fisher@atg.in.gov
***Counsel for Intervenor-Petitioner State of
Indiana***

/s/ Jeffrey A. Chanay

Derek Schmidt
Attorney General of Kansas
Jeffrey A. Chanay
Chief Deputy Attorney General
Counsel of Record
120 SW 10th Avenue, 3d Floor
Topeka, KS 66612
Tel. (785) 368-8435
Fax (785) 291-3767
Email: jeff.chanay@ag.ks.gov
***Counsel for Intervenor-Petitioner State of
Kansas***

/s/ Jack Conway

Jack Conway
Attorney General of Kentucky
Counsel of Record
700 Capital Avenue
Suite 118
Frankfort, KY 40601
Tel: (502) 696-5650
Email: Sean.Riley@ky.gov
***Counsel for Intervenor-Petitioner Com-
monwealth of Kentucky***

/s/ Megan K. Terrell

James D. "Buddy" Caldwell
Attorney General of Louisiana
Megan K. Terrell
Deputy Director, Civil Division
Counsel of Record
1885 N. Third Street
Baton Rouge, LS 70804
Tel. (225) 326-6705
Email: TerrellM@ag.state.la.us
Counsel for Intervenor-Petitioner State of Louisiana

/s/ Blake E. Johnson

Doug Peterson
Attorney General of Nebraska
Dave Bydlaek
Chief Deputy Attorney General
Blake E. Johnson
Assistant Attorney General
Counsel of Record
2115 State Capitol
Lincoln, NE 68509
Tel. (402) 471-2834
Email: blake.johnson@nebraska.gov
Counsel for Intervenor-Petitioner State of Nebraska

/s/ Eric E. Murphy

Michael DeWine
Attorney General of Ohio
Eric E. Murphy
State Solicitor
Counsel of Record
30 E. Broad St., 17th Floor
Columbus, OH 43215
Tel. (614) 466-8980
Email:
eric.murphy@ohioattorneygeneral.gov

Counsel for Intervenor-Petitioner State of Ohio

/s/ Patrick R. Wyrick

E. Scott Pruitt
Attorney General of Oklahoma
Patrick R. Wyrick
Solicitor General
Counsel of Record
P. Clayton Eubanks
Deputy Solicitor General
313 N.E. 21st Street
Oklahoma City, OK 73105
Tel. (405) 521-3921
Email: Clayton.Eubanks@oag.ok.gov
Counsel for Intervenor-Petitioner State of Oklahoma

/s/ Steven R. Blair

Marty J. Jackley
Attorney General of South Dakota
Steven R. Blair
Assistant Attorney General
Counsel of Record
1302 E. Highway 14, Suite 1
Pierre, SD 57501
Tel. (605) 773-3215
Email: steven.blair@state.sd.us
Counsel for Intervenor-Petitioner State of South Dakota

/s/ Daniel P. Lennington

Brad Schimel
Attorney General of Wisconsin
Andrew Cook
Deputy Attorney General
Delanie Breuer
Assistant Deputy Attorney General
Daniel P. Lennington
Assistant Attorney General

Counsel of Record
Wisconsin Department of Justice
17 West Main Street
Madison, WI 53707
Tel: (608) 267-8901
Email: lenningtondp@doj.state.wi.us
***Counsel for Intervenor-Petitioner State of
Wisconsin***

/s/ James Kaste
Peter K. Michael
Attorney General of Wyoming
James Kaste
Deputy Attorney General
Counsel of Record
Michael J. McGrady
Senior Assistant Attorney General
123 State Capitol
Cheyenne, WY 82002
Tel. (307) 777-6946
Fax (307) 777-3542
Email: james.kaste@wyo.gov
***Counsel for Intervenor-Petitioner State of
Wyoming***

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