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October 31, 2016

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: *State of West Virginia v. EPA*, No. 15-1363 (and consolidated cases);  
Letter pursuant to Rule 28(j) of the Federal Rules of Appellate  
Procedure by Petitioner National Mining Association

Dear Mr. Langer:

Petitioners' briefs showed that EPA far understated the effects of the Clean Power Plan (CPP) by exaggerating the amount of coal generation that will retire even without that rule. Specifically, EPA's "base case" (the future without the rule) indicated that, in 2016, 20% of U.S. coal capacity would simply disappear even if the rule were not adopted, reducing coal generation to 214 gigawatts (GW). Petitioners Core Issues Reply Brief (#1610012) at 7, n. 1.

EPA has now tacitly conceded Petitioners' point. In its Cross-State Air Pollution Rule (CSAPR) Update, published last week,<sup>1</sup> EPA eliminated these phantom retirements from its base case and now shows 268 GW of coal generation for 2016.<sup>2</sup>

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<sup>1</sup> Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS, 81 Fed. Reg. 74,504 (Oct. 26, 2016).

<sup>2</sup> This information—attached for convenience—is an excerpt from a chart in EPA's modeling files for the new CSAPR Update. *See* <https://www.epa.gov/airmarkets/analysis-cross-state-air-pollution-rule-update>, link to IPM v.5.15 Final Base Case for the CSAPR Update, link to v.5.15\_OS\_NOx\_Final\_Base\_Case SSR.

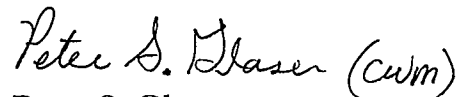
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EPA's new estimate approximates the latest utility reports to the Energy Information Administration (EIA) showing 272 GW of coal actually in service in August.<sup>3</sup>

EPA's CPP modeling concluded that coal capacity must decline to 174-183 GW to meet the CPP requirements. JA006291 & JA006294. Compared to the EIA figure of actual 2016 coal capacity (272 GW) and EPA's new "base case" (268 GW), the decline is about one third. EPA's latest modeling confirms its repeated statements that the rule will transform the power sector. Petitioners' Core Issues Opening Brief (#1610010) at 2-3, 21.

All predictions of what the energy economy would look like in the future without the CPP are inherently uncertain because the price of various types of energy fluctuates greatly over time in response to market conditions, technological developments, and government policy. EPA's CSAPR Update projection of the energy mix post 2016 suffers from its own flaws. But what is certain is that considerably more coal is in service today than EPA said when it issued the CPP, and that amount must fall significantly to meet the CPP's requirements.

Sincerely,



Peter S. Glaser  
Counsel for National Mining Association

Enclosure

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<sup>3</sup> See [http://www.eia.gov/electricity/monthly/epm\\_table\\_grapher.cfm?t=epmt\\_6\\_01](http://www.eia.gov/electricity/monthly/epm_table_grapher.cfm?t=epmt_6_01).

**TOTAL CAPACITY (Cumulative GW)**

	2016	2018	2020	2025	2030	2040	2050
<b>Hydro</b>	102	102	107	112	112	112	112
<b>Non-Hydro Renewables</b>	110	133	138	146	155	377	464
Biomass	4	5	5	5	5	5	5
Geothermal	3	3	3	4	4	4	4
Landfill Gas	2	2	2	2	2	2	2
Solar	18	20	24	27	36	258	344
Wind	83	104	104	108	108	108	109
<b>Coal</b>	268	257	209	208	207	204	203
PC	266	255	208	206	206	203	202
IGCC	2	2	2	2	2	2	2
IGCC - CCS	0	0	0	0	0	0	0
<b>New Future Technology</b>	0	0	0	0	0	0	0
Nuclear	99	99	101	101	99	60	8
Natural Gas	384	397	391	396	426	500	601
CC	237	249	248	252	277	333	417
CC - CCS	0	0	0	0	0	0	0
CT	146	148	143	144	149	168	184
<b>Oil/Gas Steam</b>	97	98	83	78	78	78	78
<b>Other</b>	5	5	5	5	5	5	5
<b>Grand Total</b>	1,064	1,090	1,035	1,046	1,084	1,337	1,472