

MEMO

Subject: Massey Energy – Grounds for a **Yes** vote on shareholder resolution requesting the company to adopt greenhouse gas reduction targets

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Contacts: Dan Bakal, Ceres
(617) 247-0700 x113, bakal@ceres.org

Rob Berridge, Ceres
(617) 247-0700 x117, berridge@ceres.org

RESOLVED: *Shareholders request that the Board of Directors adopt quantitative goals, based on current technologies, for reducing total greenhouse gas emissions from the Company's products and operations; and that the Company report to shareholders by September 30, 2010, on its plans to achieve these goals. Such a report will omit proprietary information and be prepared at reasonable cost.*

Rationale for a Yes vote:

- 1) **Massey's shareholders bear significant financial and competitive risks** if Massey is unprepared to meet existing and impending requirements to reduce greenhouse gas (GHG) emissions from its operations *and* its products. Quantitative reduction goals provide the clearest signal to investors.
- 2) **Massey's climate risk preparedness lags behind peers.**

MASSEY'S SHAREHOLDERS BEAR SIGNIFICANT FINANCIAL AND COMPETITIVE RISKS

By virtue of its carbon-intensive products, the coal sector is uniquely exposed to economic, competitive, and regulatory risks resulting from climate change. Investors need to know which companies are prepared for these risks – and which are not.

Numerous regulations exist or have been proposed to reduce GHG emissions – regulations that will have clear and direct impacts on the coal sector and that could reduce demand for coal. For example, the Environmental Protection Agency has been developing greenhouse gas regulations that will apply to stationary sources, many of which utilize coal. And, of course, the U.S. Senate is in the process of developing comprehensive climate and energy legislation that could put a price on carbon and shift the energy future of the country. Regulatory action is also still underway at the state and regional level in the United States, with regional markets in place or being planned in the Northeast, Midwest, and West and with individual states setting GHG reduction targets. Many of these climate regulations are likely to decrease demand for coal. Accordingly,

given Massey's energy-intensive operations and its particularly carbon-intensive product, the company is exposed to significant regulatory risks.

The absence of operational GHG targets may lead the company to pursue endeavors that create material shareholder risk. For instance, Massey announced last month that it had agreed to buy Cumberland Resources Corp. to capitalize on growing demand in China and the rest of Asia for metallurgical coal for making steel. In a carbon-constrained world, does it make sense to ship coal from Virginia and Kentucky to China, given that shipping costs would likely increase and coal demand would likely decrease? Perhaps, and perhaps not, but the absence of operational GHG targets makes it less likely that Massey management is considering climate-related risks in such decisions and makes it harder for investors to assess the climate-related aspects of Massey's strategies. The absence of targets also makes it harder for investors to gauge the effectiveness of current Massey initiatives that could reduce emissions. For instance, Massey has built miles of beltlines at its facilities to reduce truck travel and fuel use, but investors have little sense of what the GHG emission savings are from that effort and what other initiatives might be needed without disclosure and a metric against which to judge.

Investors similarly have limited metrics for assessing the company's strategies with respect to addressing the risk to its main product – coal – in a carbon-constrained world. Does Massey have a strategy for ensuring the economic sustainability of the company in such a world? Increasing pressure for electric utilities to sequester carbon dioxide is likely to reduce the demand for coal with certain chemical composition, energy content, and moisture content, due to technical matters related to coal gasification,¹ but is Massey exploring whether the types of coal it produces are well-suited for the leading technologies in carbon capture and sequestration? Is Massey exploring whether there are opportunities to apply its mining knowledge to the rare earth metals that will be vital to a clean energy economy? Is the company utilizing coal-bed methane as an energy source, thereby reducing GHG emissions, as some of its competitors are, as described below? Disclosure of such strategies would be of great use to investors, and a quantitative goal for reducing full lifecycle GHG emissions from products would give investors a metric against which to measure the total impact of such strategies.

In sum, Massey shareholders need to know that management is taking the risks and opportunities presented by a carbon-constrained economy seriously. Concrete GHG reduction goals are among the best indicators for investors as to which companies are prepared for and addressing the risks and opportunities of climate change. Given current regulatory efforts to ensure carbon reductions and their particular focus on coal, investors need to know which companies are prepared and which ones are not, and quantitative GHG goals are one measure of good governance and management for a company that can thrive in a carbon-constrained, clean energy economy. **Without quantitative goals, it will be difficult for investors to assess Massey's strategies.**

¹ Massachusetts Institute of Technology, *The Future of Coal – Options For A Carbon Constrained World*, page 36.

MASSEY'S CLIMATE RISK PREPAREDNESS LAGS BEHIND PEERS

Massey lags behind its peers in this regard. The precursor to quantitative GHG goals is disclosure of GHG emissions from operations and products, but Massey does not even do that – Massey did not respond to the 2009 CDP survey. This contrasts with competitors such as BHP Billiton,² Rio Tinto,³ Peabody Energy,⁴ and Xstrata,⁵ which participate actively in the Carbon Disclosure Project as well as other climate-related initiatives.⁶

In many ways, this is not surprising. In a November 2008 speech, Massey's CEO, Don Blankenship, proclaimed, "I do not believe that climate change is real."⁷ He associated energy conservation efforts with socialism;⁸ called House Speaker Nancy Pelosi, Senator Harry Reid and former Vice President Al Gore "crazies" and "greeniacs"; and asserted that any effort to reduce carbon emissions in the United States is futile.⁹ Recognizing that public concern about climate change and associated negative sentiment towards coal could mean that the industry is "in trouble," he suggested that the solution was for Massey and other companies to come up with "soundbites" that resonate with the public.¹⁰ Consistent with this strategy, Massey's 2008 Inaugural Corporate Social Responsibility Report asserted that Massey was "supporting efforts to improve the control and capture of carbon dioxide and other emissions."¹¹ However, Massey's 2009 Report makes no mention of carbon dioxide or climate change at all.¹²

But this stance means that Massey significantly lags its peers in preparing for a low-carbon economy.

Rio Tinto, for example, set 5-year targets in 2004 to reduce its GHG emissions by 4% per ton of product by 2008 (using a 2003 baseline); in 2009, the company set a new target to

² BHP is the world's largest mining company, combining BHP Billiton Plc, a London listed public company headquartered in the UK, and BHP Billiton Limited, which is listed on the Australian Stock Exchange and headquartered in Melbourne. It owns coal mines in the United States.

³ Rio Tinto is a leading international mining group, combining Rio Tinto plc, a London listed public company headquartered in the UK, and Rio Tinto Limited, which is listed on the Australian Stock Exchange, headquartered in Melbourne. Its activities span the world, including coal mines in the United States.

⁴ Peabody Energy is the world's largest private-sector coal company, with numerous coal mines in the United States. It is listed on the New York Stock Exchange.

⁵ Xstrata is a leading global diversified mining group, headquartered in Zug, Switzerland, and listed on the London and Swiss Stock Exchanges.

⁶ CDP is a U.K.-based charity affiliated with the Rockefeller Philanthropy Advisers. Through annual climate change Information Requests issued on behalf of institutional investors and others, it encourages corporations to measure, manage and reduce emissions and climate change impacts. For more information, please see <http://www.cdproject.net>

⁷ *The Big Lies of Big Coal*, videotape of speech by Don Blankenship on November 20, 2008. Available at http://www.youtube.com/watch?v=0M_XbeXDNnM

⁸ *Id.* ("Conserve? I have spent quite a bit of time in Russia and China, and that's the first stage. You go from having your own car to carpooling to riding the bus to mass transit. You eventually get to where you're walking. You go from your own apartment and bathroom to sharing kitchens with four families. That's what socialism and the elimination of capitalism and free enterprise is all about.")

⁹ *Id.* ("If you really believe that the world is going to overheat from the use of carbon, then whatever you do in the United States to reduce carbon emissions is wrong, because all that it will do is increase CO2 emissions in China.")

¹⁰ *Id.*

¹¹ Massey Energy, *Inaugural Corporate Social Responsibility Report*, 2008, page 25. Available at http://library.corporate-ir.net/library/10/102/102864/items/305025/Massey_CSR_sm.pdf

¹² Massey Energy, *Corporate Social Responsibility Report 2009*, <http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9MzYxNDY1fENoaWxkSUQ9MzU0ODgzfFR5cGU9MQ==&t=1>

reduce its total GHG emissions intensity by 6% compared to 2008 levels between 2008 and 2013, with a further 4% reduction by 2015.¹³ (Rio Tinto also provides relatively comprehensive GHG emissions disclosure in its 20-F securities filings – it discloses the emissions, often explains why the emissions increased or decreased from the previous year, and also describes efforts to reduce these emissions.)

Similarly, BHP Billiton has five-year targets of a 6% reduction in its GHG emissions intensity index and a 13% reduction in its carbon-based energy intensity index, both by the end of June 2012.¹⁴

In 2005, coal company CONSOL Energy created a subsidiary called CNX Gas, which is publicly traded under the ticker CXG. This company captures coalbed methane, a potent greenhouse gas, which decreased emissions by 20.8 million metric tonnes of CO₂-equivalent in 2005 and 20.1 million tons in 2006.¹⁵ The CNX Gas web site states:

In December 2007, CNX Gas made an environmental presentation to four governors and the energy heads of seven other states showing how methane capture not only increases indigenous energy production in Appalachia, but when done in advance of mining operations, also:

- ***Reduces the carbon footprint of the coal industry***
- ***Improves the safety of the coal industry***
- ***Realizes two saleable products from a given resource (coal alone vs. coal and gas), which increases energy efficiency.***¹⁶

The safety claim above seems particularly important in light of the recent explosion at Massey's Upper Big Branch coal mine which resulted in the death of 29 miners.

While no companies in the coal sector have set an explicit target for GHG reductions from products yet, emissions from products are significantly larger than operational emissions and are more likely to be affected by climate regulations. Other companies recognize the importance of addressing the issue. Xstrata, for instance, states on its website that "Combustion of the coal produced by Xstrata Coal in 2008 by our customers accounts for an estimated 200 million tonnes of CO₂e or approximately 8 times the emissions generated from Xstrata's operations", and the company goes on to explain that its strategy is to "invest in the development and commercialisation of low emissions technologies in partnership with other coal producers, governments, and scientific and academic organisations."¹⁷ Quantitative targets for products can help investors gauge how seriously a company is addressing the risks and opportunities presented by a low-

¹³ Rio Tinto, Climate Change and Energy, http://www.riotinto.com/ourapproach/7193_climate_change_and_energy.asp; *Climate Change*, http://www.riotinto.com/ourapproach/17214_climate_change_17321.asp

¹⁴ BHP Billiton, *Climate Change*, <http://www.wmc.com/bb/sustainableDevelopment/environmentalCommitment/climateChange.jsp>

¹⁵ <http://www.cnxgas.com/DefaultPage.aspx?pgid=25>

¹⁶ <http://www.cnxgas.com/DefaultPage.aspx?pgid=25>

¹⁷ Xstrata, *Climate change: Supporting low emissions technologies*, <http://www.xstrata.com/sustainability/environment/climatechange/technologies>

carbon economy. Companies in other sectors with products at risk from climate-related regulatory and consumer-preference changes have set GHG reduction targets for their products; in the auto sector, for instance, Nissan set a target of reducing carbon dioxide emissions from vehicles by 70% by 2050.¹⁸ Massey needs to let investors know it is preparing for a carbon-constrained world by doing the same.

A "Yes" vote on this resolution will encourage management to consider the critical risks that climate change poses to the future of the coal industry and to establish metrics by which investors can assess their efforts.

¹⁸ Nissan, *Sustainability Report 2009*, p.37, http://www.nissan-global.com/EN/DOCUMENT/PDF/SR/2009/SR09E_P022_Environment.pdf