

## **Coal Industry Strategy Letter To CEO of Peabody Energy**

June 18, 2004

**Mr. Irl F. Engelhardt**

**CEO**

**Peabody Energy**

Dear Irl:

I am pleased to provide a mid-year report on CEED activities as you consider the fundamental question in our relationship: are you receiving value for your investment in CEED as we work to enhance coal-based electricity through our efforts primarily at the regional, state, and local levels?

### **Advisory Committee meeting**

In May, we had an excellent Advisory Committee meeting, with about 50 companies and organizations participating. While the Advisory Committee (made up of Board alternates and key contacts from our Contributing Members) has no formal governing authority, our staff highly values their counsel. The Advisory Committee reviews CEED's work since the last annual meeting, helps us to plan for the remainder of the year, and assists us in identifying emerging issues and trends. Lars Scott of Peabody Energy and Chris Jenkins of CSX, as alternates for our Chairman and Vice Chairman, respectively, co-chaired the meeting.

The members and staff discussed our work on traditional issues such as regional haze, climate change, and mercury. We talked about plant siting and maintenance issues, including New Source Review and FLAG. In the area of emerging and evolving issues, we conferred about our regulatory renaissance strategic initiative.

Also, Dr. Gail Charnley made a presentation on risk, risk analysis, and risk communication that broadened and deepened our understanding of this complicated scientific field.

I enjoy this meeting each year because we focus keenly on whether CEED's work brings value to the members. I have enclosed a copy of the meeting summary and I strongly recommend that you review the Advisory Committee's counsel to CEED's staff. You can access the presentations on CEEDNet for Members (CNM) by clicking on the Advisory Committee section on the CNM home page. I want to thank Phil Klingelhofer, our Vice President's Finance and Administration, and Sheri Farris, Manager of Membership and Special Events, for their leadership in conducting this important meeting.

### **Climate change**

In the climate change arena, CEED focuses on three areas: opposing government-mandated controls of greenhouse gases (GHG), opposing "regulation by litigation" ,

and supporting sequestration and technology as the proper vehicles for addressing any reasonable concerns about greenhouse gas concentrations in the atmosphere.

1. McCain-Lieberman. U.S. Senators McCain and Lieberman plan to offer the "McCain-Lieberman bill" as a floor amendment to other legislation in the coming days. As you will recall, the Senate rejected this bill as freestanding legislation last fall on a 55-43 vote. The McCain-Lieberman bill would create a national CO2 cap and trade program that would be highly injurious to coal-based electricity.

Last week, we activated the Americans for Balanced Energy Choices (ABEC) citizen army to call targeted U.S. Senators, urging them to vote against this amendment. Through today, more than 6,000 citizen members have called or e-mailed their senators. Our most recent effort follows on the heels of last fall's citizen army activation, which generated more than 7,000 calls to target Senators in opposition to McCain-Lieberman. Joe Lucas, our Vice President's Communications, coordinates this ABEC activity.

2. RGGI. More than a year ago, New York Governor Pataki proposed an eleven-state regional CO2 cap and trade program. CEED has been engaged in this effort from its beginning. Persuading Pennsylvania and Maryland (as major coal-consuming states) to stay on the sidelines, rather than signing onto this initiative, has been one element of our strategy. The other element is to pose voluntary sequestration and technology as the correct policy, rather than mandatory controls.

The Pataki proposal, called the Regional Greenhouse Gas Initiative (RGGI), is in high gear. So far, Pennsylvania and Maryland have agreed not to formally participate in RGGI. The remaining northeastern states (Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, Delaware and New Jersey) are committed to fashioning the program no later than April 2005.

In recent weeks, we have persuaded the RGGI participants to post the following pieces of CEED research on their web site for consumption by the states:

\* A 2003 New Hope study showing reductions in greenhouse gases by the RGGI states would have an infinitesimal affect on global GHG concentrations.

\* A 2003 Energy Ventures Analysis (EVA) study revealing negative economic results would flow to northeastern states that constrain CO2 emissions.

\* A 2004 Energy Ventures Analysis report analyzing the affect of various cap and trade proposals, along with an output-based standard, on RGGI states as well as Pennsylvania and Maryland. EVA found that the economic consequences vary widely.

We plan to use this research to sow discord among the RGGI states. We have used Unions for Jobs and the Environment (UJAE) extensively in our efforts. As you will recall, CEED is a major funder of UJAE, which is composed of ten large industrial unions. Also, Ned Leonard is integral to our RGGI work though his outreach to states concerning carbon sequestration as the alternative to mandatory controls. I have described Ned's work in more detail below.

If we are unable to persuade the RGGI states to abandon a regional program of mandatory controls (and that is a long shot), then we will discuss with the CEED membership whether you want us to engage in shaping the program elements, such as what offsets will be recognized, how the trading program will work, etc. John Paul, our North Region Vice President, is responsible for our RGGI work.

3. CO2 litigation. About a dozen states sued the EPA last year alleging that the agency must regulate CO2 under the Clean Air Act. CEED was the lead organization for outreach to the vast majority of state attorneys general who intervened on the Bush Administration's side in new litigation designed to force CO2 regulation under the Clean Air Act. Ten AGs have intervened on EPA's side and CEED had lead responsibility for nine of them. We don't expect a decision by the federal court until 2005. Randy Eminger, our South Region Vice President, is our climate team leader. Each Regional Vice President has been involved in this outreach to attorneys general.

4. NGA resolution. Three years ago, the National Governors' Association (NGA) wrestled with a climate change resolution. Several governors wanted NGA to embrace mandatory government controls. CEED and other stakeholders promoted a voluntary approach. In the end, the NGA adopted a resolution that applauded voluntary actions and called on the federal government to refrain from agreeing to any international agreement that a) would absolve developing nations from taking action or b) would cause damage to America's economy.

This year, the NGA resolution must be reaffirmed or revised or it sunsets. The governors of California, Washington, and North Carolina have offered amendments that would make unacceptable changes to the existing policy. We are working with the governors who serve on the Natural Resources Committee, from which the resolution must originate, to reaffirm the existing policy. In the next few weeks, the committee will make its recommendation as NGA's prepares for its annual meeting in August. John Paul is our lead liaison with NGA and all of our Regional Vice Presidents are engaged in this outreach.

5. Regional sequestration partnerships. For almost a year, CEED has participated in six regional carbon sequestration partnerships established by the U.S. Department of Energy. We made modest financial contributions to the partnerships so that we can participate in their substantive decisions. Our staff and Ned Leonard (who is a loaned executive from Western Fuels Association) have interacted with and, where appropriate, guided these regional partnerships in terms of public policy and public outreach. Our goal is straightforward: persuade states that voluntary sequestration activities and technology investments are appropriate policies to address climate change concerns, while government mandatory controls are not.

Our belief is that, on climate change like other issues, you must be for something rather than against everything. The combination of carbon sequestration and technology is what we preach and we are looking for more members in the choir. I thank Western Fuels for their extraordinary contribution by loaning Ned to the effort.

## **Mercury**

Our strategy in dealing with mercury has been two-fold: prevent states from taking precipitous or unwarranted action to regulate mercury and engage in the federal rulemaking to protect the interests of coal-based electricity.

1. Comments to EPA. Upon the request of three Executive Committee members, CEED developed written comments to EPA during the agency's mercury rulemaking this year. In a special Board meeting by phone, the membership approved filing comments that stated CEED's preference for a) national legislation, rather than regulation, and b) national cap and trade program as opposed to a plant-specific Maximum Available Control Technology (MACT) regime or a cap and trade program that the states controlled.

2. State activities. In the realm of state action, only Connecticut has taken formal action this year to regulate mercury. If EPA promulgates a rule using a cap and trade approach, we expect several states to consider more stringent mercury controls in 2005. Just last week, the same northeastern states that are engaged in the RGGI process agreed to begin discussions on a regional multi-emissions plan that would be more stringent than EPA's mercury cap and trade program or EPA's proposed Clean Air Interstate Rule (the regional transport rule).

3. ECOS. CEED does outreach to about twenty national and regional organizations. We spent considerable time over the past few years dealing with the Environmental Council of States (ECOS), which is composed of top state environmental officials. In 2003, the Quicksilver Caucus with ECOS tried to pass a resolution calling for the "virtual elimination" of mercury. CEED worked in a coalition with other organizations and companies to convince many states that the Quicksilver strategy was not the right approach and the "virtual elimination" verbiage failed.

This year, some ECOS members tried again -- this time arguing for a resolution that demanded the Bush administration withdraw the proposed mercury rule and replace it with a MACT regime that would produce 90% mercury reductions by 2008. It boggles the mind to consider how much effort it took to stop ECOS from passing that resolution, which the sponsors dropped in a couple of days before the meeting. The ECOS meeting turned into a raucous affair, with state officials yelling at one another, one breaking down into tears -- all over the mercury resolution. In the end, ECOS passed a resolution calling on EPA to allow the cap and trade option and supporting an "early timeframe for action". ECOS will continue to be a challenge moving forward and they have just formed a Climate Change Working Group. Left to its own devices, you can imagine what that working group will conceive. Rosemary Wilson, our Midwest Region Vice President, is our mercury team leader and Randy Eminger is our lead liaison with ECOS.

## **Regional haze**

In regards to regional haze, we have three elements to our strategy: a) connect the haze rule with the EPA's newly proposed Clean Air Interstate Rule, b) litigate the Haze Rule, including the Western Annex, where appropriate, and c) work within Regional Planning Organizations (RPOs).

1. Linkage with CAIR. Early in 2004, Gene Trisko, one of CEED's consultants, discovered that, at least in some areas of the country, compliance with the EPA's proposed Clean Air Interstate Rule (CAIR) might not be sufficient for compliance with the Regional Haze Rule. In other words, utilities making approximately 70% reductions from existing SO<sub>2</sub> and NO<sub>x</sub> emissions might have to do more in the first phase implementation of the regional haze rule because of how some (states, RPOs?) have defined "natural conditions".

We shared this research with some allied associations and Gene fed his findings into EPA through his own contacts. We were pleased that, through our combined efforts with other associations, EPA recognized the validity of our concerns. EPA incorporated new language into the proposed CAIR stating that compliance with CAIR should constitute reasonable progress under the Regional Haze Rule. The agency subsequently clarified its intent to limit CAIR to about 28 eastern and Midwestern states, so the linkage is not applicable to the remaining 22 states. Still, this research has limited the risk of having to install additional, unnecessary emissions controls because of the haze rule. John Paul is our team leader on CAIR, which many folks previously referred to as the Regional Transport Rule.

2. Litigation. We are committed to preserving the victory that CEED brought about in the American Corn Growers case in 2002. Accordingly, CEED was the only entity to confront the EPA's new Western Annex Rule in federal court. EPA based the Western Annex Rule on the same group Best Available Retrofit Technology (BART) scheme that the court declared invalid in American Corn Growers. With our members' concurrence, CEED has opposed the "western option" for three years, largely because research shows that Section 309 would be worse for coal-based electricity than the rule provisions that are applicable to the rest of the nation. All parties have briefed the case and the court should hold oral arguments this fall.

CEED is also challenging a consent decree between the EPA and Environmental Defense because this agreement could allow a federal court to redefine BART in a way that would undermine our court victory. The court in this case just asked EPA and Environmental Defense to provide a memorandum supporting the court's ability to entertain the consent decree, which we consider a positive development.

3. Haze comments. Because of the Corn Growers decision, the EPA repropose the regional haze and Best Available Retrofit Technology (BART) rules in April. We are finalizing comments to EPA because we believe the repropose rule a) virtually ignores the Corn Growers decision, b) usurps states' authority granted under the Clean Air Act, c) makes maximum controls more likely, perhaps with no effect on visibility, and d) elevates the FLAG guidance document to a federally enforceable requirement. We will circulate the draft comments to the Advisory Committee members in a few days and hold a call about them later this month.

4. Regional Planning Organizations. Several years ago, EPA created five Regional Planning Organizations to develop haze rule implementation strategies. Our strategy in dealing with RPOs is to focus them on conducting good research before getting into implementation strategies. That seems like common sense, but often these kinds of organizations want to provide answers before they know what the question is. In 2004, the RPOs have concentrated on emissions monitoring and modeling, rather than going off into the weeds. Terry Ross is our haze team leader and all the Regional Vice Presidents are involved with various RPOs.

## **Plant siting and maintenance**

CEED's activities regarding plant siting and maintenance have grown steadily in the past two years. We are especially excited about the prospects of growing our industry through new plant sitings. 1. Individual sitings. While we are involved in generically supporting several new plant sitings, let me spotlight one. Both CEED and ABEC are supporting construction of Peabody Energy's Prairie State Energy Campus

in Illinois. CEED and ABEC teamed with Peabody to provide contacts with the ABEC citizen army and the media, as well as sponsoring economist Dan Klein to appear at a public hearing. He discussed the findings of the Klein-Kenney report that CEED commissioned concerning the health benefits associated with coal-based electricity. Joe Lucas and Rosemary Wilson collaborated in this work.

2. New Source Review. CEED began dealing with New Source Review (NSR) issues last year. We took responsibility for securing several state attorneys general to intervene on EPA's side in the first round of litigation seeking to overturn the NSR "general applicability" rules, which our members favored. Ultimately, eight attorneys general intervened in support of the Bush Administration's position and CEED had lead responsibility for four of those AGs. A second round of litigation ensued in 2003 concerning the "routine, repair, and Maintenance" rules within NSR. We took advantage of our membership in the Republican Attorneys General Association to facilitate getting AGs to intervene in this second phase of NSR litigation. Ten AGs have intervened on the EPA's side and CEED had major responsibility for several of them. Terry Ross is our NSR team leader and each Regional Vice President has been involved in the outreach.

## **Outreach to organizations**

In April, CEED hosted our first meeting specifically to discuss our strategy and tactics for outreach to national and regional organizations that represent elected and appointed officials. Eighteen member companies and associations participated in this meeting. While we are generally pleased with how our outreach to these organizations has brought value over the years, we recognize the need to make coordination among member companies and associations even stronger. Based on these discussions, we agreed that CEED would enhance communications with our members and the effectiveness of our outreach by:

- \* Sending an assessment for each organization to members in January each year that will include a) important issues we anticipate the organization will debate or decide, b) contact information and meeting dates for the organization, and c) contact information for CEED's lead liaison.

- \* Holding another meeting late in 2004 or early in 2005, such as the gathering we held this April, to discuss strategy and tactics for outreach to the organizations.

- \* Sending action alerts, as necessary, from CEED's lead liaison to inform the membership about important outreach actions that CEED is asking them to take regarding the organizations.

I have enclosed a copy of our outreach meeting summary for details about CEED's work with each target organization. All of CEED's senior staff play key roles as we interact with these organizations.

## **CEED annual meeting**

Please keep our 2004 annual meeting in mind as you plan for the fall. We will meet on November 17-19 at The Ritz-Carlton Golf Resort, Naples (Florida). We have

negotiated an incredible room rate of \$209.00 at a resort that consistently ranks in the top ten nationally. CEEDNet for Members has more details on the home page.

## **Conclusion**

We are excited about the work we have underway as well as the emerging and evolving issues we have tackled. In my next President's Letter, I am going to brief you on our regulatory renaissance initiative, including the Brenner research project, and the latest from ABEC.

Sincerely, Stephen L. Miller

President and CEO

Enclosure: Advisory Committee meeting summary Outreach meeting summary