

A.G. Schneiderman Secures Unprecedented Agreement with Peabody Energy to End Misleading Statements and Disclose Risks Arising From Climate Change

Attorney General's Investigation Found That Coal Giant's Public Statements On Risks Posed To The Company By Climate Change Violated State Laws Prohibiting False And Misleading Conduct In Connection With Securities Transactions

Peabody Energy Corporation Is The Largest Publically Traded Coal Company In The World

Schneiderman: Peabody Energy Has A Responsibility To Be Honest With Its Investors And The Public About The Risks Posed By Climate Change, Now And In The Future

NEW YORK – Attorney General Eric T. Schneiderman today announced that a first-of-its-kind investigation by his office found that Peabody Energy Corporation (Peabody) – the largest publically traded coal company in the world – violated New York laws prohibiting false and misleading conduct in the company's statements to the public and investors regarding financial risks associated with climate change and potential regulatory responses.

As part of the agreement concluding the investigation, Peabody will file revised shareholder disclosures with the Securities and Exchange Commission that accurately and objectively represent these risks to investors and the public. The disclosures affirm that “concerns about the environmental impacts of coal combustion...could significantly affect demand for our products or our securities.” Peabody has agreed that all future statements to shareholders and the public will be consistent with the terms of its agreement with the Attorney General's office and the disclosures it will file with the SEC. The agreement, which is the form of an Assurance of Discontinuance, can be found [here](#).

“As a publicly traded company whose core business generates massive amounts of carbon emissions, Peabody Energy has a responsibility to be honest with its investors and the public about the risks posed by climate change, now and in the future,” **Attorney General Schneiderman** said. “I believe that full and fair disclosures by Peabody and other fossil fuel companies will lead investors to think long and hard about the damage these companies are doing to our planet.”

Attorney General Schneiderman initiated an investigation of Peabody's financial disclosures in securities filings in 2013. The investigation found that the company repeatedly denied in public financial filings to the Securities and Exchange Commission (SEC) that it had the ability to predict the impact that potential regulation of climate change pollution would have on its business, even though Peabody and its consultants actually made projections that such regulation would have severe impacts on the company.

For example, Peabody internally projected that if specific aggressive regulatory action was implemented on existing power plants and future electricity generation in the United States, it would reduce the dollar value of coal sales in its primary United States markets by 33% or more. Peabody also hired an outside consulting firm, which in March 2014 projected that enactment of a \$20 per ton carbon tax would reduce the demand for coal as a fuel source in electric power generation in the United States in 2020 by between 38% and 53% compared to 2013 levels.

The Attorney General's investigation further found that Peabody, in SEC filings as well as other public communications, provided incomplete and one-sided discussions of the findings and projections of the International Energy Agency (IEA) relating to future world coal demand. The IEA, considered to be the world's leading authority on future global energy developments, makes projections about world coal demand based on various scenarios for future world energy production scenarios.

The investigation found that in its projections of the future, Peabody frequently referred in public statements to results of only one of the IEA's three scenarios for worldwide coal demand: the "Current Policies Scenario," a status-quo scenario that predicts rising future demand for coal based on an assumption that governments will fail to adopt any new policies or regulations to reduce the amount of climate change pollution—even policies and regulations that the IEA deems governments are likely to adopt. In doing so, Peabody failed to disclose the IEA's other two scenarios, which are much less favorable projections of world coal demand by the IEA.

Increasing action on reducing climate change pollution through laws, regulations, and policies on the local, state, national and international level is likely. In fact, in its 2014 World Energy Outlook, the IEA states that, as a general matter, coal's "future use is constrained by measures to tackle pollution and reduce CO₂ emissions." Because of this, the IEA's other two coal-demand scenarios incorporate future action to combat climate change and therefore project significantly less global demand for coal.

The Attorney General concluded that Peabody's disclosures denying the ability to reasonably predict the future impact of any climate change regulation on its business, and the company's statements in SEC filings and in other public communications concerning the IEA's projections for the future of coal, violated provisions of both New York's Martin Act and Executive Law which prohibit false and misleading conduct in connection with securities transactions.

Under the agreement announced by Attorney General Schneiderman today, Peabody commits to ending certain representations to investors and the public that minimize the company's financial risks related to climate change. In addition, when it does mention the IEA's projections, Peabody must do so fairly and objectively. Specifically, the agreement requires that the company:

- In its quarterly report being filed with SEC on November 9, 2015, provide disclosures concerning projections that the company has been able to make regarding the impact on the company's business of

certain potential laws, regulations and policies involving climate change, and regarding different scenarios used by the IEA in its projections of demand for coal.

- Not represent in any public communication that it cannot reasonably project or predict the range of impacts that any future laws, regulations, and policies relating to climate change or coal would have on Peabody's markets, operations, financial condition or cash flow; and
- Correctly and in good faith describe IEA's scenarios for global demand for coal in its public communications, including requiring that if Peabody cites demand projections under the IEA's Current Policy Scenario, the company will also cite the Agency's two less favorable projections.

Peabody serves power generating and metallurgical customers in nearly 25 countries on six continents. Through its subsidiaries, the company has majority interests in 26 coal operations located throughout all major U.S. coal-producing regions and in Australia. The company reports revenues totaling \$6.79 billion.

This matter is being handled by Assistant Attorneys General Philip Bein, Morgan A. Costello and Michael J. Myers, and Chief Environmental Scientist, Alan Belenz, all in the Attorney General's Environmental Protection Bureau, led by Bureau Chief Lemuel M. Srolovic; John Oleske, Special Counsel, Social Justice Division, led by Executive Deputy Attorney General Alvin Bragg; and David Castleman, Assistant Attorney General in the Investor Protection Bureau, Steven Glassman, Senior Enforcement Counsel and Chief Economist Guy Ben-Ishai, all in the Economic Justice Division, led by Executive Deputy Attorney General Karla Sanchez.