



June 10, 2016

MBTL SEPA Draft EIS  
c/o ICF International  
710 Second Avenue, Suite 550  
Seattle, Washington 98104

To Whom It May Concern:

**Introduction to Cloud Peak Energy, Its Throughput Option at MBT and Experience as a Leading Supplier to Asian Utilities**

Cloud Peak Energy Inc. (“CPE”) is headquartered in Wyoming and is one of the largest U.S. coal producers, with three owned and operated award-winning surface mines located in the Powder River Basin (“PRB”) in Wyoming and Montana. In 2015, CPE paid approximately \$303 million in taxes, royalties and other payments to the federal and local governments, while incurring a net loss for 2015 of \$204 million. CPE is widely recognized for its exemplary performance in its safety, reclamation, and other environmental programs, and is a sustainable fuel supplier for approximately three percent of the nation’s electricity. CPE’s approximately 1,500 employees mine low sulfur, sub-bituminous coal and provide logistics supply services. In 2015, CPE shipped approximately 75 million tons from its three mines to customers located throughout the U.S. and around the world. CPE also owns rights to substantial undeveloped coal and complimentary surface assets in the Northern PRB. CPE has a throughput option agreement for up to 7.7 million tons of capacity per year upon completion of the Millennium Bulk Terminals (“MBT”). CPE has been the largest single exporter in recent years of low sulfur coal from the PRB to East Asian countries that have included, among others, Japan, South Korea, and Taiwan. PRB coal is supplied to Asian countries as a swing supplier depending on the pricing environment, offsetting coal that would otherwise be purchased by those countries from alternative coal basins. As a result of being a swing supplier and depressed seaborne coal prices, CPE is not currently exporting coal to Asia.

**Flawed Assumptions in Draft EIS**

As a leading coal industry participant with experience and expertise supplying Asian electric utilities, CPE would like to offer comments on the flawed and inaccurate assumptions included in draft Environmental Impact Statement (“EIS”) for MBT regarding several issues including alleged CO<sub>2</sub> emissions levels associated with potential coal exports from MBT. Specifically, as discussed below:

- Coal is incorrectly identified in the DEIS as a “hazardous material”. There is no regulatory basis for this designation and any such reference to coal in the DEIS must be removed or corrected.

- Regardless of whether MBT is constructed or how many tons of PRB coal may become available through MBT, Asian countries are continuing to build modern, efficient, and clean-burning coal-fired electric generating plants to provide reliable, affordable, safe, and diverse sources of power to their growing economies and to provide their growing populations with access to modern and healthy lifestyles afforded by low-cost power.
- Even at full capacity, coal shipped through MBT to Asian countries would be immaterial by any standard compared to the vast overall coal demand of those countries.
- Any notion, as erroneously included in the draft EIS, that coal shipped through MBT would somehow increase overall coal burn by Asian utilities and associated emissions is baseless and not supported by the facts.
- To the extent PRB coal is shipped through MBT to Asian countries, it would replace, not increase, coal that would otherwise be supplied by alternative coal basins.
- CPE's PRB coal would compete primarily against lower quality Indonesian sub-bituminous and lignite coal. Given logistical economics, PRB coal would first displace Indonesia in the North Pacific countries of Japan and South Korea. Any notional Indonesian surplus coal would then seek other Asian customers, most likely in India, where it would hold a heat content and overall quality advantage over native Indian coal. Since higher heat content coal presents lower Greenhouse Gas emissions ("GHGE") than lower heat content coals, the introduction of PRB coal for Asian customers would raise the overall average quality of coal and result in a net reduction of GHGE. Further, Japan and South Korea operate and are building among the most efficient and environmentally controlled coal-fired power plants in the world. These are the plants that would utilize PRB coal.
- PRB coal is mined by industry leading producers who operate some of the safest and most heavily regulated mines in the world and would likely replace lower quality Indonesian coal that would otherwise be burned, resulting in substantial positive environmental impacts by allowing shipments of PRB coal through MBT.
- Requiring GHGE Mitigation Constitutes Regulatory Overreach. Where the causal relationship between a proposed action and an adverse impact is speculative or remote, then there is no basis for an agency to exercise its SEPA substantive

authority. And where an adverse impact is caused by a proposed action, any proposed mitigation condition must be proportionate to the nature and extent of that impact. In this DEIS Ecology fails to identify any climate change impact that would be caused by the MBT project. In addition, Ecology fails to justify how it exercises its SEPA substantive authority where the very impacts that agency seeks to mitigate will occur with or without the MBT project.

## **Discussion**

Coal is not a hazardous material under any legal definition in state or federal law.

The DEIS erroneously lists coal as a hazardous material. All statements of this type should be removed from the EIS. Specifically, Chapter 3, Section 3.6. Page 3.6-22. Remove the last bulleted item in a list of hazardous materials on site during operations that states “Coal handled during facility operations and during transportation”.

U.S. Coal Exports to Asia Would Not Lead to Increased Green House Gas Emissions.

CPE has unparalleled expertise regarding U.S. coal exports to Asian countries that would be served by MBT. No other company has exported as much coal from the PRB to those countries in any given year as CPE. Having said that, export terminal capacity restrictions have meant that in no year since CPE became a publicly traded company in 2009 has it exported more than 5 million metric tonnes. Given that the International Energy Agency predicts global demand for coal will grow to exceed 9 billion metric tonnes, even were MBT exports to reach their full capacity, they would constitute a figurative drop in the bucket in terms of both global and East Asian coal demand. We attach for your information the IEA's 2014 Coal Report, the most recent available.

Asian countries that could conceivably be served by coal exports from MBT could easily meet their coal requirements from a number of sources other than the U.S., including Russia, Colombia, Indonesia, Australia, and China. Therefore, any projection for growth in GHGE or global GHGE levels attributed to U.S. coal exports from MBT is completely baseless and contrary to market realities. Currently, depressed seaborne coal prices as well as a strong U.S. dollar make exports from the PRB temporarily unprofitable. Even in prior periods with more robust seaborne coal prices, PRB coal remained a swing supplier to East Asia based on transportation costs and variations in coal quality and heat content across competing coal basins. There are three key lessons that should be drawn from this that categorically demonstrate the falsehood of the premise the U.S. coal exports from MBT would lead to *any* increase in GHGE:

- 1) Despite the fact that there are currently no coal exports from the PRB to those East Asian countries that MBT would supply, seaborne coal prices remain low;
- 2) Coal-fired power plants are being built throughout Asia to meet growing demand for electricity, yet coal prices remain low;

- 3) Despite projected demand growth for coal in Asia and despite the fact that numerous coal-fired power plants are being built across the region, coal producers in the region from China to Indonesia to Australia are still closing coal mines.

These facts tell the very clear story that sufficient supplies of coal exist within the region to meet Asian demand without any U.S. coal exports and that coal consumers, i.e., Asian electric utilities, are sufficiently confident in long term pricing to see coal as a preferred fuel source for decades to come. Thus, the draft EIS' suggestion that U.S. coal exports from MBT would *add* to global GHGE is false and cannot be supported based on the facts. U.S. coal exports from MBT would replace coal volumes that might otherwise be supplied by other international coal basins when prices rise to the point where U.S. coal exports become competitive. When competitively priced, these countries are expected to purchase coal from the U.S. because of the higher heat content and low sulfur content of PRB coal and to enhance supply diversity and energy security. However, sufficient overall capacity exists to meet demand with or without the relatively small amount of U.S. coal exports that East Asia has witnessed over the last ten years. The fact that governments and utilities across the region are making long term investment decisions based on coal utilization at a time when U.S. coal exports are not supplying their needs underscores this fact.

This brings us to another important point with regards to GHGE where the draft EIS again reflects false and inaccurate information. While U.S. coal exports from MBT would not be incremental coal consumption volume but instead replacement for production from other countries, that replacement would have important positive environmental impacts. PRB coal exported from MBT would, from a cost and quality perspective, compete with Indonesian sub-bituminous coal. At competitive price points, PRB coal provides two important environmental impact benefits versus Indonesian sub-bituminous coal:

In the first place, on a tonne per tonne basis, PRB exports from CPE's Spring Creek Mine, for example, exceed Indonesian heat content by up to several hundred BTU's (British Thermal Units) per tonne in some cases. Coal with higher heat content generally presents lower GHGE than coal with lower heat content. As Asia builds more and more High Efficiency Low Emissions ("HELE") Ultra Supercritical coal plants, the higher thermal value of PRB coal will enhance plant efficiency versus use of competitive Indonesian coal, thus, on a tonne per tonne basis, PRB "replacement" coal will generate lower relative GHGE, thus leading to lower global GHGE levels.

Secondly, on a tonne per tonne basis, PRB coal contains lower sulfur content than competitive Indonesian coal. For example, CPE's main source of export coal is its Spring Creek Mine, coal from which has an average sulfur content of 0.37% vs competitive Indonesian sub-bituminous and lignite coal with as much as 1.0% sulfur, or more than double the content. Lower sulfur content allows for the lower cost operation of scrubbers in coal plants and would allow for lower cost of operations in future plants operating with

Carbon Capture equipment for sequestration or utilization. In other words, PRB “replacement” coal would incentivize GHGE reductions in those countries it supplies, thus *making MBT coal exports effectively net GHGE negative.*

To summarize, the Draft EIS assumptions that U.S. coal exports from MBT would lead to *any* increase in Asian coal demand or CO<sub>2</sub> or other GHG emissions is false because of the following facts:

- 1) Asian coal demand is expected to lead global coal demand growth over the coming decades and the decisions driving that growth and the power plant construction that affirms it are being made without regard to the availability of U.S. coal. Thus, U.S. coal exports would replace some existing coal supplied by Russia, China, Indonesia, Australia, and/or Colombia;
- 2) Sub-bituminous PRB coal is the major coal source that MBT is likely to serve. It is, from a quality and price perspective, likely to compete with Indonesian coal – coal that it would replace not add to;
- 3) U.S. coal exports offer East Asian power plants additional energy security through supply diversity, additional quality, and higher efficiency of operations versus like competitive coal from Indonesia. Nevertheless, U.S. coal exports must be competitively priced to access East Asian customers and the fact that coal demand is growing while U.S. coal exports are currently not price competitive demonstrates that these exports fulfill the swing supplier needs and represent *replacement* rather than *incremental* volume;
- 4) PRB coal is often possessed of relatively higher BTU content per tonne than Indonesian coal with which it principally competes, thus would likely generate reduced CO<sub>2</sub> emissions versus the coal it would replace;
- 5) PRB coal is often possessed of lower sulfur content versus the coal it would replace allowing increased efficiency in power plant operations vs the coal it would replace, thereby leading to further reductions in CO<sub>2</sub> emissions as well as lower Sulfur Dioxide emissions. In effect, MBT coal exports to Asia would be CO<sub>2</sub> neutral to negative.

As discussed above, the Draft EIS is flawed in its assumptions with regards to the impact on GHGE from MBT coal exports. Further, there is no statutory authority granted to Cowlitz County, the State of Washington, or the Army Corps of Engineers that would allow them to make any decision with regards to the permitting of the MBT project based on the demonstrably wrong assumption that coal exports from the terminal would lead to increased CO<sub>2</sub> emissions in other countries.

Therefore, CPE respectfully submits that the DEIS should be amended either to explicitly recognize the fact that potential coal exports from MBT would *not* add to global GHG

emissions or, to remove any such assessment from the final EIS in light of the fact that it is irrelevant to the decisions facing the permitting authorities.

Requiring GHGE Mitigation is Regulatory Overreach.

The essential purpose of SEPA is fairly straightforward: (1) evaluate potential environmental impacts cause by a proposed action; (2) evaluate whether those impacts are adverse; and (3) evaluate how to avoid or mitigate adverse environmental impacts caused by the proposed action.

This third element, however, requires more than merely pointing out an adverse impact that may result from a proposed action. Rather, the agency must demonstrate that the proposed action is the cause of an adverse impact. In addition, the agency must make an individual determination that any proposed condition -- to avoid or mitigate an adverse impact -- is specifically necessary to address that impact.

Where the causal relationship between a proposed action and an adverse impact is speculative or remote, then there is no basis for an agency to exercise its SEPA substantive authority. And where an adverse impact is caused by a proposed action, any proposed mitigation condition must be proportionate to the nature and extent of that impact.

In this DEIS Ecology fails to identify any climate change impact that would be caused by the MBT project. In addition, Ecology fails to justify how it exercises its SEPA substantive authority where the very impacts that agency seeks to mitigate will occur with or without the MBT project. For example:

- 1) Ecology assumes without any rationale or justification that incremental new GHG emissions are an adverse impact without any explanation about how the MBT emissions cause adverse environmental impacts;
- 2) Ecology assumes without any rationale or justification that incremental new GHG emissions that are above federal or state regulations -- which do not apply to the MBT project -- constitute a level of emissions that is considered to be a significant impact;
- 3) Ecology assumes without any rationale or justification that MBT's incremental new GHG emissions contribute to climate change irrespective of how minor those emissions are relative to global GHG emissions;
- 4) Ecology assumes without any rationale or justification that mitigating 50% of incremental new GHG emissions from the MBT project will mitigate -- below a level of significance -- the adverse climate change impacts presumably caused by the MBT project; and
- 5) Despite all of these assumptions, Ecology concludes in the DEIS that the "ongoing and expanded operations in the project area would be affected by climate change as described for the Proposed Action" -- meaning that, in Ecology's view, climate change

impacts to the project area under the No Action Alternative will be the same with or without the operation of the MBT project.

Ecology's approach utterly fails to apply SEPA in a manner consistent with law, policy or practice. With this DEIS, the agency sets a precedent that it can exercise its SEPA substantive authority without identifying an impact that is caused by a proposed project and impose mitigation conditions without regard to how those conditions will address such impacts. This precedent will have far reaching impact on the development of a vast array of projects in Washington State, such as maritime, rail, agriculture, exports and imports.

Cloud Peak Energy is pleased to note that the Draft EIS puts to rest many of the false claims of those made by fossil fuel opponents. We hope that the information contained in our comments will help to address certain erroneous conclusions drawn in the Draft EIS and lead to the rapid issuance of permits for MBT.

Please do not hesitate to contact Mr. Richard Reavey, Vice President of Government Affairs for Cloud Peak Energy at (720) 566-2900 or by e-mail to [richard.reavey@cldpk.com](mailto:richard.reavey@cldpk.com), if you wish to further discuss the matters in this letter.

Sincerely,

Cloud Peak Energy Inc.