

As You Sow Shareholder Campaign on the Financial Risks of Investments in Coal

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AS YOU SOW



As You Sow coal
finance research
project:
-- began summer
2010
--white paper
published June
2011.

Campaign Objectives

Document consensus among industry analysts on the financial case against coal.

Assess coal risks at targeted utility companies based on key risk indicators.

Engage capital market players in dialogue about financial risks of investments in coal:

- Investors
- Utility company management
- Investment advisors, managers

Publicize financial case against coal and company-specific risks

- Financial media and utility trade press
- NGOs and community activists



The Facts: Markets are Moving Away from Coal

- Since 2005, over 153 new announced coal plants were ***canceled by energy stakeholders*** - \$243 billion *disinvested*.
- Since 2009 over 14 GW of announced retirements of existing fleet (more anticipated).
- A spate of investment advisory warnings about the viability of coal plant retrofits given environmental compliance and market changes.
- Standard and Poor's estimates coal's share of generation market will drop to 33% from normal range of 50% given modest carbon regulation. Alternative energy markets can fill void.
- **Coal Plant Valuations suffer 10% loss in 2010**; projections for lower profits in 2011 and continued flat natgas prices beyond.
- Utilities can no longer profitably burn coal from Central Appalachia. Coal producers have turned to new markets for future revenue boosts.

Risk Adjusted Returns ?

American Economic Review 101 (August 2011): 1649–1675
<http://www.aeaweb.org/articles.php?doi=10.1257/aer.101.5.1649>

Environmental Accounting for Pollution in the United States Economy[†]

By NICHOLAS Z. MULLER, ROBERT MENDELSON, AND WILLIAM NORDHAUS*

This study presents a framework to include environmental externalities into a system of national accounts. The paper estimates the air pollution damages for each industry in the United States. An integrated-assessment model quantifies the marginal damages of air pollution emissions for the US which are multiplied times the quantity of emissions by industry to compute gross damages. Solid waste combustion, sewage treatment, stone quarrying, marinas, and oil and coal-fired power plants have air pollution damages larger than their value added. The largest industrial contributor to external costs is coal-fired electric generation, whose damages range from 0.8 to 5.6 times value added. (JEL E01, L94, Q53, Q56)

Coal Risk Indicators

- CMS
- Dominion
- Duke
- Entergy
- FirstEnergy
- PSEG
- Xcel

The risk indicators for a coal-burning utility are:

- the age and size of its coal fleet;
- whether its plants have environmental controls to meet new and more stringent environmental standards;
- how much coal it burns; and
- the price of that coal relative to other fuels.



2011 Request to Companies

An Extra Level of Diligence at a Time of Challenge and Opportunity

Shareowners request that the Board of Directors, at reasonable cost and omitting proprietary information, issue a report by [DATE] on the financial risks of continued reliance on coal generating plants versus investments in efficiency and cleaner energy, including assessment of the cumulative costs of environmental controls and remediation, risks related to the price and supply of coal, and the increasing competitiveness of alternative generating sources.



The Rationale

The U.S. fleet of coal-fired power plants is aging and the companies that rely upon them face unprecedented financial risks:

- Regulatory Risk
- Commodity Risk
- Construction Risk

Why continue with coal?

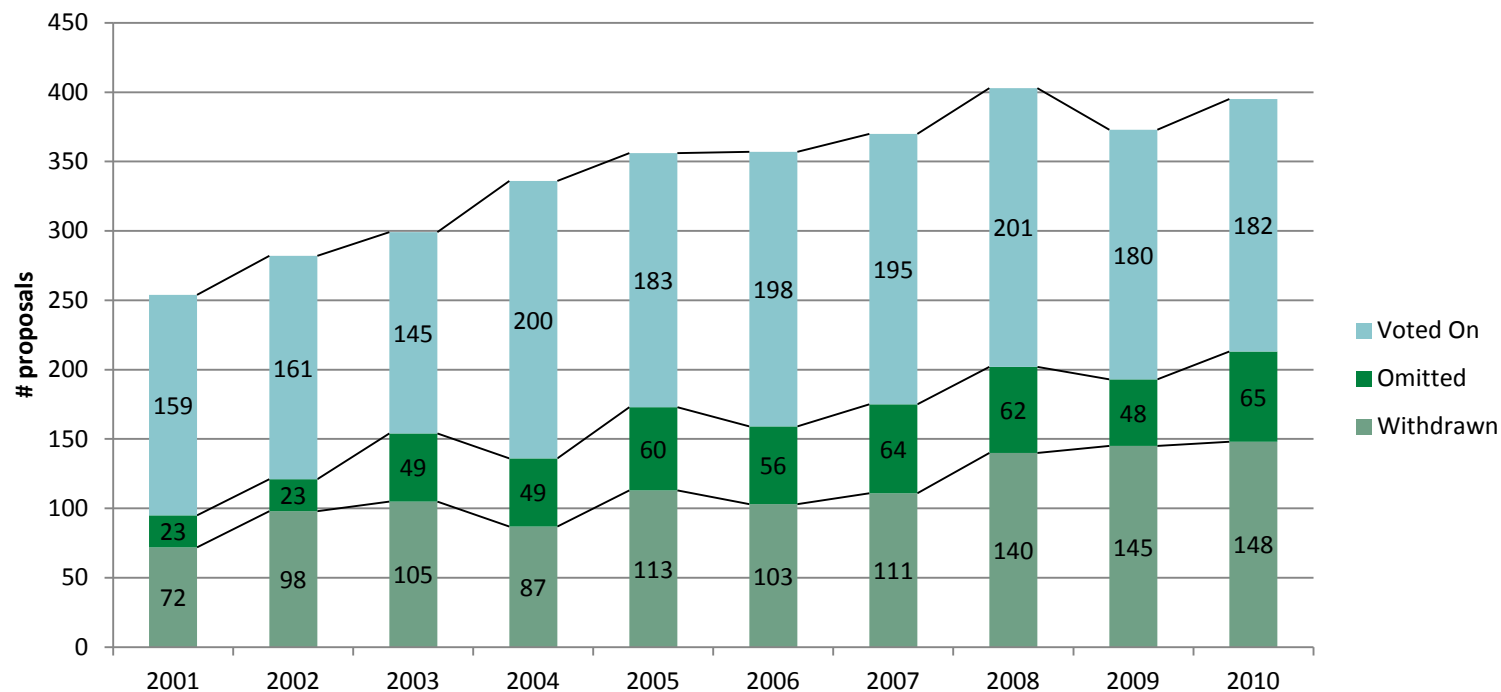
What is the optimum portfolio mix?



Shareholder Proposals

Historical Context

US Social and Environmental Shareholder Proposals Filed, 2001-2010



Sources: Sustainable Investments Institute (Si2), SS, IRRIC

Rule 14a-8 Shareholder Proposals

“This section addresses **when a company must include a shareholder's proposal in its proxy statement** and identify the proposal in its form of proxy **when the company holds an annual or special meeting of shareholders.**” [Emphasis added]

The Rule is written in Q&A form:

Definition of a Shareholder Proposal: Rule 14a-8(a) Question 1

A shareholder proposal is a recommendation or requirement that the company and/or its board of directors take action, which you intend to present at a meeting of the company's shareholders.

- Corporations are chartered under state law and most states do not allow shareholders to mandate actions by the board – see Note to 14a-8(i)(1) below. Consequently, resolutions are cast as recommendations to the board and they are not binding even if passed by a majority of shareholders.

Eligibility of Shareholder Proponent: Rule 14a-8(b) Question 2

Must be a registered owner of \$2,000.00 worth of stock that has held for at least one year and will be held through the date of the company's annual meeting.

- A group of shareholders may “co-file” the resolution and the value of their shares will be aggregated in determining the threshold amount of \$2,000.00
- Proponent(s) must submit proof of ownership and a filing letter stating they meet eligibility requirements along with the resolution.

Rule 14a-8

Procedural Requirements: Rule 14a-8(c), (e), (h) Questions 3-5, 8

- A shareholder may file only one resolution with the company.
- The resolution may not exceed 500 words (including symbols and abbreviations).
- The resolution must be submitted to the company not less than 120 calendar days before the date of the company's proxy statement released to shareholders in connection with the previous year's annual meeting. The filing deadline is usually published in the proxy from the prior year.
- The shareholder or a designee must be present at the annual meeting to present the proposal.

Exclusion of a Proposal: Rule 14a-8(f), (g), (j) and (k) Questions 6, 7, 10 and 11

The company may ask the SEC for permission to exclude the proposal on the ground that the proponent failed to comply with all of the requirements of Rule 14a-8.

- The company must notify the proponent in writing of any procedural or eligibility deficiencies within 14 days after receiving the proposal, as well as of the time frame for the proponent's response. However, no notice is required if the proposal is submitted after the filing deadline.
- The company may challenge the resolution on substantive grounds under Rule 14a-8(i) in a No action request to the SEC submitted at least 80 days before the company files its definitive proxy statement with the SEC.
- The burden rests with the company to show the proponent has not complied with the Rule in some respect.
- The proponent may submit a response to the No action request.

Rule 14a-8 Grounds for Exclusion

Substantive Content: Rule 14a-8(i) Question 9

A company may seek to exclude a proposal for one or more of the following substantive reasons (the most frequently cited reasons are in boldface):

“(1) ***Improper under state law***: If the proposal is not a proper subject for action by shareholders under the laws of the jurisdiction of the company's organization;

(3) ***Violation of proxy rules***: If the proposal or supporting statement is contrary to any of the Commission's proxy rules, including §240.14a-9, which **prohibits materially false or misleading statements in proxy soliciting materials**;

(7) ***Management functions***: If the proposal deals with **a matter relating to the company's ordinary business operations**;

(10) ***Substantially implemented***: If the company has already substantially implemented the proposal;

(11) ***Duplication***: If the proposal substantially duplicates **another proposal previously submitted to the company by another proponent that will be included in the company's proxy materials** for the same meeting;

(12) ***Resubmissions***: If the proposal deals with substantially the same subject matter as another proposal or proposals that has or have been previously included in the company's proxy materials within the preceding 5 calendar years, a company may exclude it from its proxy materials for any meeting held within 3 calendar years of the last time it was included if the proposal received:

- (i) **Less than 3% of the vote** if proposed once within the preceding 5 calendar years;
- (ii) **Less than 6% of the vote** on its last submission to shareholders **if proposed twice previously** within the preceding 5 calendar years; or
- (iii) **Less than 10% of the vote** on its last submission to shareholders **if proposed three times or more** previously within the preceding 5 calendar years;



Shareholder Proposal #6 on the Proxy:
FINANCIAL RISKS of RELIANCE on COAL
Duke Energy Corporation Symbol: DUK

Duke Energy faces material financial risks from its reliance on coal. Duke does not address the material financial risks identified by industry analysts related to its exposure to coal.

Vote "FOR"

Shareholder Proposal #6 that asks Duke to

REPORT ON THE FINANCIAL RISKS OF CONTINUED RELIANCE ON COAL

Duke Energy:

- Is the 3rd largest producer of coal-fired electricity in the US, and the 6th largest electricity producer.¹
- Operates in regulated markets in Ohio, Indiana, Kentucky, North Carolina and South Carolina
- Operates in deregulated markets in Ohio, Illinois, Indiana, Pennsylvania, Wyoming and Texas.
- Has 15 coal-fired plants with "combined owned capacity" of 13,454 MW. In 2010, 61.5% of Duke's generation derived from coal.
- Sources coal from Central Appalachia (Duke Carolinas) and the Illinois Basin (Duke Midwest).
- Is retiring 17 coal-fired units at 6 of its plants.²
- Is investing in new coal: an 800 MW unit (Unit 6) at Cliffside, NC; and a 618 MW IGC plant in Edwardsport, IN. It's also building two new combined cycle natural gas plants.
- Is pursuing a merger with Progress Energy and, upon completion of the merger, the combined company will be the largest utility in the US.
- The combined company will own and operate twenty-nine coal-fired plants with a total capacity of over 23,000 MW³ and 6.6 GW of unscrubbed coal-fired capacity.⁴
- Recorded impairments of \$500 million and \$371 million related to Commercial Power's non-regulated Midwest generation reporting unit in 2010 and 2009. Duke Energy Ohio recorded impairments of \$677 million and \$727 million related to Commercial Power's non-regulated Midwest generation reporting unit in 2010 and 2009.⁵

1. Duke Energy's Coal Risk Exposure.

The risk indicators for a coal-burning utility are: the age and size of its coal fleet; whether its plants have environmental controls to meet new and more stringent environmental standards; how much coal it burns and the price of that coal relative to other fuels.

- Five of Duke's 15 coal plants are over 50 years old. The company has announced retirements of 17 coal units, including some that are 60 years old, and is considering additional retirements.
- Of the twenty-nine coal plants in the combined Duke-Progress fleets, fourteen first went online during the 1940s and 1950s. Ten went online during the 1960s and 1970s.
- Duke has six plants without scrubbers totaling 4.2 GW.
- Duke's coal-fired plants in NC, OH, IN, KY, and PA are subject to the Clean Air Transport Rule starting in 2014 that is designed to reduce SO₂ emissions by 71% below 2005 levels.
 - The Electric Power Research Institute (an industry sponsored organization) estimates that installation of one SO₂ scrubber on a 500MW plant in the mid-west would cost about \$420/kW, or \$210 million.⁶

Proxy
Memo
Duke
Energy



Shareholder Proposal # on the Proxy:

FINANCIAL RISKS of RELIANCE on COAL

FirstEnergy Corporation

Symbol: FE

FirstEnergy faces material financial risks from its reliance on coal. FirstEnergy does not address the material financial risks identified by industry analysts regarding its reliance on coal and the information FE provides to investors is insufficient to evaluate FE's management of these risks.

Vote "FOR"

Shareholder Proposal ## that asks FirstEnergy to

REPORT ON THE FINANCIAL RISKS OF CONTINUED RELIANCE ON COAL

FirstEnergy:

- Is the 5th largest consumer of coal in the US. It ranks 13th for total power generation and 9th for generation from coal.
- Operates 8 regulated utility subsidiaries based in Ohio, Pennsylvania and New Jersey
- Owns FES, a deregulated generation and marketing company in the PJM and MISO power markets. FES' generating portfolio consists of 54% coal (7,157 MW).¹
- Sources approximately 23.79 million tons of coal per year from Illinois Basin, Powder River Basin, and Central Appalachia.
- Plans to sell its ownership interest in the troubled Signal Peak mine in Montana.²
- Plans to retire five coal plants on a temporary basis in response to the rising cost of coal.
- Reduced operations at smaller coal-fired units in response to the continued slow economy and lower demand for electricity, as well as uncertainty related to proposed new federal environmental regulations, resulting in a write off up to \$287 million in value related to the assets and a reduction of up to \$0.59 per share of common stock in the third quarter of 2010.³
- Plans to merge with Allegheny Energy, increasing FE's total coal generation capacity from 7,469MW (54.2% of total) to 14,880MW (62% of total) for the new company, and the number of its coal plants will from nine to twenty.
 - The acquisition of Allegheny's fleet, containing predominantly old and small power plants, will exacerbate FE's financial risk.

1. FirstEnergy's Coal Risk Exposure

The risk indicators for a coal-burning utility are: the age and size of its coal fleet; whether its plants have environmental controls to meet new and more stringent environmental standards; how much coal it burns; and the price of that coal relative to other fuels.

- FE controls 9 coal-fired plants, five of which are less than 300 MW.⁴
- Of the 19 coal plants in the combined FE-Allegheny fleet, 13 first went online before 1960. Not one plant or generating unit in the entire combined fleet was built after 1980.
- Only eight of the 19 plants are equipped with modern pollution control technologies for SO₂ or NOx (scrubbers and/or selective catalytic or non-catalytic reducers)
- Capital expenditure for compliance at five of FE's plants is projected at \$399 million for 2010-

Proxy Memo FirstEnergy

Helping Foundations
and Endowments
Align Investment
and Mission

[proxypreview]

2011

Communication with SRI Networks

- Ceres
- ICCR
- INCR
- Proxy Advisors
(ISS, Glass Lewis)
- Websites (Moxy
Vote)

**Shareholder Rebuttal to Duke Energy's Opposition Statement
(Resolution #6, page 27 in the Proxy)**

240.14a-103 Notice of Exempt Solicitation
U.S. Securities and Exchange Commission, Washington, DC 20549

NAME OF REGISTRANT: AS YOU SOW
NAME OF PERSON RELYING ON EXEMPTION: AS YOU SOW
ADDRESS OF PERSON RELYING ON EXEMPTION: 311 CALIFORNIA STREET, SUITE 510,
SAN FRANCISCO, CA 94104

Proposal #6 Report on the Financial Risks of Continued Reliance on Coal

As You Sow, a shareholder advocacy organization, has filed this proposal on behalf of the Obadiah Brown/Sarah Swift Benevolent Fund. The Proponent is concerned about the long-term value of Duke Energy's coal-fired generating assets given the numerous reports by industry analysts demonstrating that coal plants face unprecedented material risks that are eroding the value of these assets, and our company's write down of \$2.275 billion in 2009 and 2010 for impairments of its regulated and non-regulated generating assets.¹

The proposal requests that:

Duke Energy's Board of Directors, at reasonable cost and omitting proprietary information, issue a report by November 2011 on the financial risks of continued reliance on coal contrasted with increased investments in efficiency and cleaner energy, including assessment of the cumulative costs of environmental compliance for coal plants compared to alternative generating sources.

Since January 2010, no fewer than 12 reports by industry analysts² have concluded that electric utility companies that rely on coal-fired generation confront several challenges that cumulatively pose high risk for their investors. These challenges include:

- Competition from low natural gas prices which is exerting downward pressure on power prices;
- Capital expenditures for environmental compliance and uncertainty about the cost implications of pending and anticipated environmental mandates;
- Persistently high construction costs;
- Coal price volatility, rising prices, and shifting markets all placing upward pressure on coal prices;
- Improved profitability and policy mandates for solar, wind, and energy efficiency investments; and
- The slow pace of development of viable commercial scale carbon capture and storage for coal plants.

Duke Energy's Opposition Statement recites the following arguments against the Proposal:

- The Board of Directors believes this report is unnecessary as it is duplicative of information that Duke Energy already provides.
- Duke Energy discloses the material risks related to climate change and carbon change in its Annual 10-K filing with the Securities and Exchange Commission, in its response to the Carbon Disclosure Project's questionnaire, and in its Sustainability Report.

SEC Exempt Solicitation - Duke

-- Posted on the SEC
website:

<http://www.investorscopes.com/AS-YOU-SOW/PX14A6G/10953789.aspx>

SEC Exempt Solicitation - FirstEnergy

Shareholder Rebuttal to FirstEnergy Corporation's Opposition Statement (Proposal #9, page 25 in the Proxy)

240.14a-103 Notice of Exempt Solicitation

U.S. Securities and Exchange Commission, Washington, DC 20549

NAME OF REGISTRANT: AS YOU SOW

NAME OF PERSON RELYING ON EXEMPTION: AS YOU SOW

ADDRESS OF PERSON RELYING ON EXEMPTION: 311 CALIFORNIA STREET, SUITE 510, SAN FRANCISCO, CA 94104

Proposal #9 Report on the Financial Risks of Continued Reliance on Coal

As You Sow, a shareholder advocacy organization, has filed this proposal on behalf of Eleanore Despina. The Proponent is concerned about the long-term value of FirstEnergy's coal-fired generating assets given the numerous reports by industry analysts demonstrating that coal plants face unprecedented material risks that are eroding the value of these assets. The merger with Allegheny Energy has increased our company's reliance on coal plants that many industry analysts consider to be at risk and, in the past year, several credit analysts downgraded FirstEnergy and its subsidiaries.

This is not a solicitation of authority to vote your proxy. Please DO NOT send us your proxy card; the proponent is not able to vote your proxies, nor does this communication contemplate such an event. The proponent urges shareholders to vote FOR question number #7 following the instruction provided on the management's proxy mailing.

QuickTime™ and a
TIFF (LZW) decompressor
are needed to see this picture.

The Annual General Meeting

Platts

Coal a risky investment for shareholders: As You Sow
June 20, 2011

Nonprofit organization As You Sow claimed a number of financial risks faced by coal-burning utilities and coal producers in a recent report. The report said that market changes, location, regulation and the cost of production are altering coal industry dynamics, perhaps fundamentally. The June 15 report, “Financial Risks of Investments in Coal”, details the perceived risks to investors with interests in coal-burning utility companies and coal producers. Low natural gas and power prices, coupled with increased coal price volatility, increase the financial risks in investing in US coal-related businesses, the report maintained.

Quoting a November 2010 research note from Deutsche Bank, AYS said in its report, “Gross margins in competitive power markets fundamentally boil down to fossil fuel arbitrage. In any given hour the marginal generating unit sets the energy price for all producers. Spot and forward power prices track the commodity prices of the price setting fuel,” which in most cases is natural gas.

Co-author Tom Sanzillo, in a June 16 interview, said that there is currently a significant amount of underutilized capacity at natural gas-burning facilities, providing greater opportunities to displace coal in the US market. Sanzillo is a senior associate at T.R. Rose Associates, a public policy consulting firm.

Proxy resolution pushing for coal risk disclosures gains traction at some utilities

SNL Coal Report May 30, 2011

by A b b y G r u e n

Activist investors opposed to coal generation made inroads at several utility shareholder meetings this proxy season. Balloting at FirstEnergy Corp.'s, Duke Energy Corp.'s and Dominion Resources Inc.'s annual board meetings did not give the coal resolution — which asked that the companies' boards of directors to prepare a report by November 2011 describing the financial risks of continued reliance on coal and plans for converting to cleaner energy sources — a binding majority but gave the proposal enough support to allow it to be refiled in 2012.

Investors in CMS Energy Corp. also voted on the same resolution, but results of the vote have not been released yet to As You Sow, the nonprofit corporate responsibility group sponsoring the measure. “FirstEnergy had the largest vote, 31%. We were really surprised to get that high of a vote, particularly on a new resolution, first time out, that is so technically complex,” As You Sow CEO Andrew Behar said. The resolution received 8.6% of shares voted at Duke and 6.7% at Dominion. The SEC requires that a proposal receive at least 3% of shares voted to be refiled after the first year.

Behar said FirstEnergy's recent acquisition of Allegheny Energy Inc., with “the dirtiest coal fleet,” was a factor in the size of the vote. “We have seen votes that are 8% or 10% where management comes to the table and says, ‘Our shareholders want to do something here; let's figure this out,’” Behar said. “To be running a major public company, you need to be listening, and 31% is very significant.”



2012 Request to Companies

Shareowners request that [company] Board of Directors report to shareholders by [date], at reasonable cost and omitting proprietary information, on plans to reduce our company's exposure to coal-related costs and risks, including progress toward achieving specific goals to minimize commodity risks, emissions other than greenhouse gases, costs of environmental compliance, and construction risks.



Seize the Time!