

MASSEY ENERGY CO
Form DEFA14A
May 05, 2010

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

SCHEDULE 14A

Proxy Statement pursuant to Section 14(a) of the
Securities Exchange Act of 1934

(Amendment No.)

Filed by the Registrant

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Check the appropriate box:

Preliminary Proxy Statement

Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))

Definitive Proxy Statement

Definitive Additional Materials

Soliciting Material Pursuant to § 240.14a-12

MASSEY ENERGY COMPANY

(Name of Registrant as Specified in its Charter)

(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

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The following information was prepared for and will be presented to shareholders, investors and analysts:

SHAREHOLDER
PRESENTATION
May
2010

COMPANY OVERVIEW

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EBITDA in Millions*

Cash and Liquidity in Millions**

** \$72 million in restricted cash posted as appeal bond for Harman litigation reverted to cash in 2010 Q1.

#1 coal producer in Central Appalachia

#5 coal producer in U.S. by produced coal revenue

2.9B tons of total coal reserves

1.3B metallurgical coal

38.0M tons produced in 2009

31% of 2009 produced coal
revenue was from met coal

Strong cash generation and
balance sheet

* Please see disclaimer and Non-GAAP information on pages 28-30

FINANCIAL UPDATE

FAVORABLE MARKET POSITION

Central Appalachia is relevant, and remains advantaged

Massey is well positioned to take advantage of met coal opportunities

Atlantic Basin will continue to be a natural home for our exports

International markets (Indian Ocean and Pacific) are increasingly becoming an attractive destination

Steam coal inventories are recovering

Massey is in a good position to acquire/consolidate Central Appalachia

Cumberland acquisition is validation of strategic focus

Massey short and long term prospects are bright and compare favorably to other coal and energy platforms

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COMPETITIVE ASSET BASE

According to equity research analysts, US coal companies have been trading at just under \$2/ton of reserves

(1)
on an enterprise value basis

5

Notes:

- (1) Source -
BMO Capital Markets equity research
- (2) MEE numbers reflect combination of Cumberland
and Massey's YE '09 estimated reserves and YE '09
estimated production

VALUE RELATIVE TO COMPETITION

Massey's intrinsic assets
drive greater value than the
competition:

Emphasis on met coal

Strong margins

Stable asset base

Geographic dominance

Recent transactions point
to a precedent of \$3/ton

for
assets
of
this
nature

(1)

6

(2)

(2)

Note:

(1) BMO Capital Markets equity research; FBR Capital Markets equity research

(2) MEE numbers reflect combination of Cumberland and Massey's YE 09 met
coal contribution and estimated reserve life

NET DEBT TO CAPITALIZATION

0%

10%

20%

30%

40%

50%

60%

29.3%

Dec. 31

2006

Dec. 31

2007

Dec. 31

2008

Dec. 31

2009

Massey's strong performance and prudent financial management allowed us to improve our net debt position, despite the recent financial crisis

*Please

see

disclaimer

and

Non-GAAP

information

on

pages

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-

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STRONG FINANCIAL FOUNDATION

Massey has benefited from strong financial management and leadership

The debt and equity we issued in August of 2008 provided our company with stability and security during the global recession that emerged shortly thereafter and prevailed throughout 2009

At March 31, 2010, we had cash and cash equivalents totaling \$1,162.9 million (see note). This compared to \$665.8 million at December 31, 2009

Massey also had \$98.6 million available under its asset-based revolving credit facility for total liquidity of \$1,261.5 million at March 31, 2010 (see note)

Our total debt-to-book capitalization ratio was 42.4 percent at March 31, 2010 compared to 51.2 percent at December 31, 2009

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Since November 2000,

Massey's market cap value has risen from \$758M to \$4.2B

Massey Energy employed

3,600 people in 2000;

today, it employs 6,950

note: cash and liquidity totals were prior to closing of the Cumberland acquisition on April 19, 2010. The cash consideration for the acquisition was \$640.0 million

FOCUS ON MAINTAINING PERFORMANCE

Management is committed to determining source of accident AND maintaining operational excellence

Separate team running our own investigation/cooperating with others

Core team remains focused on critical business objectives

Continued efforts to maintain and improve safety performance

Meeting production goals and customer commitments

Integration of Cumberland acquisition

Grow metallurgical coal sales via increased focus on international

markets and customers

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SAFETY UPDATE

STATUS OF UPPER BIG BRANCH

The investigation is ongoing

MSHA, West Virginia and Massey inspection teams are being assembled to determine the cause of the accident

Just days before the explosion, federal mine inspectors commented favorably on conditions in the mine

From November 1, 2009 through April 4, 2010, there were seven D Orders issued at UBB, an 80% reduction in rate from the previous seven months

From January 1, 2010 through April 4, there were zero lost-time accidents at UBB

Something
went
terribly
wrong
at
UBB

but the source has not been identified

We do not yet know what caused the explosion

Accusations that we are indifferent to safety could not be more wrong
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CULTURE OF SAFETY

Culture

S-1 is not just a slogan, but a
vow

Corporate culture today
focuses on three priorities:
safety, ethics and excellence

Members are among the best
trained, most productive and
safest miners in the world
Board

The Board works to ensure

that we have in place a strong process for identifying, prioritizing, sourcing, managing and monitoring our critical risks

The Audit, Compensation, Finance, Governance and Nominating and Safety, Environmental and Public Policy Committees are each responsible for risk oversight within each committee's area of responsibility and regularly report to the Board of Directors Management

Our Hazard Elimination Committee, comprised of top managers and chaired by the COO, requires every violation to be investigated and reported on

Weekly, it regularly reviews new violations and decides upon actions that should be taken, including the disciplining of Massey members

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Safety is Job 1

S-1

HISTORY OF SAFETY EXCELLENCE

Massey puts the safety of its members first

The amount of time lost to accidents at Massey Energy has bested the industry average for 17 of the last 19 years

Massey's Non-Fatal Days Lost rate has shown constant improvement and is far better than the industry average. At the end of March 2010, our YTD NFDL rate was 0.79

Since 2005, Massey has spent more than \$45M on underground safety innovations above and beyond the regulatory requirements

In 2009, MSHA awarded Massey Energy three Sentinels of Safety Awards

the most ever received by a company in a single year

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SIGNIFICANCE OF NFDL SAFETY METRIC

Non-Fatal Days Lost (NFDL) is the industry-wide safety metric

NFDL has emerged as the industry standard because it measures actual safety track record

CtW is pushing violations metric for shock factor not safety purposes

Fits narrative structure and obscures political agenda driving campaign

Ignores track record and the turnaround we drove at UBB in 2009-2010

Volume of MSHA violations can be a misleading metric

various grades of violations

different levels of actual impact

violation standards change regularly and are assessed subjectively

leads
to
treatment
of
supposed
symptom
rather
than
actual
cure
14

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NFDL RATES OF MASSEY VS. INDUSTRY

0.00

2.00

4.00

6.00

8.00

10.00

12.00

Massey

Industry

Massey's Non-Fatal Days Lost rate has consistently beaten industry averages

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CORPORATE GOVERNANCE UPDATE

COMMITMENT TO CORPORATE GOVERNANCE

We have taken aggressive steps over the last decade to keep pace with the evolving governance landscape and remain open to feedback regarding best practices. In the last six years we have:

Lowered
the
mandatory
retirement
age
for
those
joining
the

board
after
January
1st,
2006
to age 74 from age 78

Capped severance agreement payouts for senior executive officers

Amended our equity plan to set minimum vesting periods and cap cash incentives

Developed an annual Corporate Social Responsibility Report

Instituted Stock Ownership Guidelines for our top 5 employees

Implemented a claw back provision that enables the company to reclaim any bonus paid to an executive if the Board of Directors determines there was intentional misconduct that led to a restatement of financial statements filed with the Securities and Exchange Commission

Adopted a Director Resignation Policy, which is triggered if a director nominee fails to secure a majority of shareholder votes

Invited shareholders to comment on board declassification and pledged to put it to a formal vote in 2011 if there is majority support for such action

Reviewed
related
transactions
to
determine
board
independence
and
found
none
that
rose to the disclosure level set by the New York Stock Exchange
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GOVERNANCE LEADERSHIP

Admiral Inman has assumed leadership of the Governance and Nominating Committee

25 years of experience on the Massey Board of Directors

Lead Independent Director

Only current public corporate board

Previously served on corporate boards of Dell, Fluor, SAIC, SBC (now AT&T), Temple-Inland, Oracle and Xerox

Lady Judge resigned her Massey board seat on April 14, 2010

She arrived at this decision independently and on the basis of issues unrelated to her role at Massey

We do not believe the number of boards that a director serves on should be a determining factor in a director's eligibility to serve

Regardless
this was CtW's primary objection and it has been resolved
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WILLINGNESS TO ENGAGE SHAREHOLDERS

Many of the best practices we have adopted have been driven by thoughtful dialogue with our shareholders

In that spirit, our most recent conversations have identified significant common ground

We are open to declassifying our Board and look forward to shareholder feedback on the recent proposal

We are considering the expansion of Board size and are actively recruiting additional members

We are committed to board independence and have found no related transactions

that rise to the NYSE disclosure level

We value fresh perspectives and have brought in 4 new directors in the last 5 years

CtW is not a shareholder
nor are they interested in actual dialogue
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BOARD OVERSIGHT OF MANAGEMENT

Chairman & CEO Don Blankenship retains full confidence of the board

Making changes in the midst of a crisis is exceptionally high risk

When the crisis has subsided and we know the facts, we will maintain the highest standard of accountability and responsibility

Mr. Blankenship has created significant shareholder value during his tenure

In 1987, Massey Coal Company was worth an estimated \$190M and had approximately 1200 employees

November 2000 market cap of \$758M, 3600 employees

May 2010 market cap of \$3.2B, 6950 employees

The recent sell-off is not indicative of go-forward shareholder value

Unfortunate market reaction
not permanent destruction of value

CtW
generated rumors are destroying
not protecting -
value
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ENVIRONMENTAL AND REGULATORY COMPLIANCE

The board puts a priority on Safety and Environmental oversight

All directors participate in quarterly meetings of the Safety,
Environmental and Public Policy Committee

The Board of Directors strongly believes that deliberate resolution of
regulatory issues is in the best interest of shareholders

Decision to settle with EPA in 2008 was driven by our desire to avoid a
confrontational
battle
with
the
agency

that
could
have
distracted
the company from its core business

Share price has appreciated over 43% since that January 2008
settlement
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EXECUTIVE COMPENSATION PRINCIPLES

Our equity plan does not permit stock option repricing or cash buyouts

We have never repriced options or exchanged them for shares, options or cash without shareholder approval

Our directors and CEO are subject to stock ownership guidelines

We have double trigger change in control agreements

We have implemented and disclosed a claw back provision

All directors own stock

The length of the employment agreement with the CEO is 2 years

BOARD STRUCTURE

Massey's commitment to compliance and ethics is supported and encouraged by the company's strong Board of Directors and a highly qualified audit committee

We
have
assembled
a
diverse
set
of
industry
experts
that
provide

unique
insight into strategic direction and draw upon corporate governance and risk
oversight best practices from across industry

The company's Corporate Governance Guidelines require a majority of
independent Board members with no material relationship to the company or its
affiliates

The nominating, compensation, audit committees are 100% independent

75% of total directors are independent and we disclose Board/governance
guidelines

During
2009
each
director
attended
at
least
95%
of
the
aggregate
of
all
board
meetings
and
meetings
of
Board
committees
on
which
such
director
served
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BOARD TENURE AND EXPERTISE

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Board Member

Tenure

Relevant Experience

Stanley C. Suboleski

2 years

Former Commissioner of the Federal Mine Safety and Health Review

Commission. Provides mining engineering consulting services. Professor and as

the Department Head of Mining and Minerals Engineering at the Virginia

Polytechnic Institute and State University. B.S. and PhD degrees

in Mining

Engineering from the Pennsylvania State University and his M.S. degree in

Mining Engineering from the Virginia Polytechnic Institute and State University.

Richard M. Gabrys

(Current Nominee)

Chairman, Finance
Committee

3 years

Former

Vice

Chairman

of

Deloitte

&

Touche

LLP

with

valuable

financial

expertise, especially in public reporting and mergers and acquisitions. Serves on boards of MS Energy Company, La-Z-Boy Incorporated, TriMas Corporation, and tax-exempt entities: The Detroit Institute of Arts, Karmanos Cancer Institute, Alliance for Safer Streets in Detroit (Crime Stoppers), Detroit Regional Chamber and Ave Maria University.

Baxter F. Phillips

(Current Nominee)

3 years

Joined

Massey

in

1981.

Experience

in

various

positions

in

senior

leadership

of

the

Company.

Holds

a

bachelors

of

science

in

business

management

and

a

master's degree in business administration from Virginia Commonwealth University. Extensive experience in investments and banking.

Richard H. Foglesong

Chairman,

Compensation

Committee

4 years

General, U.S Air Force (retired). Former President of Mississippi State University. President and Executive Director of the Appalachian Leadership and Education Foundation. director of Michael Baker Corporation. Board member of CDEX, Inc. Experience in safety performance and public policy matters.

BOARD
TENURE
AND
EXPERTISE

25

Board Member

Tenure

Relevant Experience

James B. Crawford

Chairman, Safety,

Environmental and

Public Policy

Committee

5 years

A consultant for Evan Energy Investments, LC. Chairman of Carbones

InterAmericanos S.A. Former Chairman and CEO of James River Coal Company

and Transco Coal Company. Board of Trustees of Colby College, Chair Emeritus of the Collegiate School and current Chairman of the Boys and Girls Club of Metro Richmond Foundation. Extensive financial and managerial experience in domestic and international coal mining, trading and shipping experience.

Dan R. Moore

(Current Nominee)

Chairman, Audit

Committee

8 years

Chairman of Moore Group, Inc. Former Chairman, President and CEO

of the

former

Matewan BancShares. Director and Chairman of the West Virginia

University

Foundation.

Board

member

of

the

Branch

Bank

and

Trust

Company

and West Virginia Housing Fund.

Don L. Blankenship

Chairman, Executive

Committee

14 years

Director

of

the

National

Mining

Association

and

the

U.S.

Chamber

of

Commerce. Extensive knowledge of coal mining and financial expertise and leadership, safety, risk oversight and management.

Bobby R. Inman

Lead Independent

Director and

Chairman of the

Governance and

Nominating

Committee

25 years

Admiral, U.S. Navy (retired). Professor at the LBJ School of Public Affairs at the University of Texas. Former Director of the National Security Agency and Deputy Director of the Central Intelligence Agency. Managing director of Gefinor Ventures, Inc. and Limestone Ventures, Inc. Broad experience evaluating international and political risk.

AGENDA BEHIND THE CtW
CAMPAIGN

We believe Massey is the target of a coordinated pro-union campaign to unseat the current board and management team

CtW s
original issue was the governance leadership of Director Judge

They demanded her resignation and she has since left the board

Now seeking to capitalize on UBB accident and force broader change

We
are
conducting

our
own
investigation
and
cooperating
with
all
others

We are committed to accountability once cause has been determined

Rush to judgment is designed to weaken the company in wake of crisis

CtW
is
driven
purely
by
political
considerations

not
shareholder
value

We stand by our safety record and reject their political agenda

We are committed to good governance and have demonstrated this
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CONCLUSION

The
Board
of
Directors
has
demonstrated
considerable
progress
on
the
corporate
governance
issues
that

have
been
raised
by
the
CtW
Investment
Group

Primary objection with the makeup of the Board has been resolved

It is troubling that, in the wake of the current crisis, CtW
would threaten to mount a
campaign to withhold votes from our three qualified nominees

Opportunistic
attempt
to
place
blame
before
the
facts
are
known

all
hyperbole

Rush to judgment assumes culpability for the accident and imagines a connection to
broader corporate governance claims

Consider the damage to shareholder value that the forced resignation of the
Chairman of the Finance Committee, the Chairman of the Audit Committee and the
President of Massey would have as the company emerges from a serious crisis

After
an
understanding
of
the
facts
-
return
on
shareholder
value,
commitment
to
safety

and
best
practices
in
Corporate
Governance

-
it
is
clear
the
Board
of
Directors
of Massey Energy should be retained
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DISCLAIMER

FORWARD-LOOKING STATEMENTS: certain statements in this presentation are forward-looking as defined by the private securities litigation reform act of 1995. Such forward-looking statements are based on facts and conditions

as
they
exist
at
the
time
such
statements
are
made
as

well
as
predictions
as
to
future
facts
and
conditions
the
accurate
prediction
of
which
may
be
difficult
and
involve
the
assessment
of
events
beyond
the

company's control. Caution must be exercised in relying on forward-looking statements. Due to known and unknown risks, the company's actual results may differ materially from its expectations or projections. Factors potentially contributing to such differences include, among others: market demand for coal, electricity and steel which could adversely affect the company's operating results and cash flows; Future economic or capital market conditions; Deregulation of the electric utility industry; Competition in coal markets; Inherent risks of coal mining beyond the company's control, including weather and geologic conditions; The company's ability to expand mining capacity; The company's production capabilities; The company's plan and objectives for future operations and expansion or consolidation; Failure to receive anticipated new contracts; Customer cancellations of, or breaches to, existing contracts; Customer delays or defaults in making payments; The company's ability to manage production costs;

The
company's
ability
to
timely
obtain
necessary
supplies
and
equipment;
The
company's
ability

to attract, train and retain a skilled workforce; Fluctuations in the demand for, price and availability of, coal due to

labor and transportation costs and disruptions, governmental policies and regulatory actions, legal and administrative proceedings, settlements, investigations and claims, foreign currency changes and other factors; And greater than expected environmental and safety regulation, costs and liabilities. The forward-looking statements are also based on various operating assumptions regarding, among other things, overhead costs and employment levels that may not be realized. While most risks affect only future costs or revenues anticipated by the company, some risks might relate to accruals that have already been reflected in earnings. The company's

failure

to

receive

payments

of

accrued

amounts

could

result

in

a

charge

against

future

earnings.

Information

concerning those factors is available in the company's annual reports on form 10-K and quarterly reports on form 10-Q.

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NON-GAAP INFORMATION

"EBIT" is defined as Income before interest and taxes. "EBITDA" is defined as Income before interest and taxes before deducting Depreciation, depletion, and amortization (DD&A). Although neither EBIT nor EBITDA are measures of performance calculated in conformity with accounting principles generally accepted in the

United

States ("GAAP"), we believe that both measures are useful to an investor in evaluating us because they are widely used in the coal industry as measures to evaluate a company's operating performance before debt expense and as a measure of its cash flow. Neither EBIT nor EBITDA purport to represent operating income, net income or cash generated by operating activities and should not be considered in isolation or as a substitute for measures of performance calculated in accordance with GAAP. In addition, because neither EBIT nor EBITDA are calculated identically by all companies, the presentation here may not be comparable to other similarly titled measures of other companies.

"Net debt" is calculated as the sum of Short-term debt and Long-term debt less Cash and cash equivalents (adjusted for funds designated for Cumberland acquisition), Short-term investment and Restricted cash (included in Other current assets). Although Net debt is not a measure of performance calculated in accordance with GAAP, management believes that it is useful to an investor in evaluating Massey because it provides a clearer comparison

of
our
debt
position
from
period
to
period.
Net
debt
should
not
be
considered
in
isolation
or
as
a
substitute
for

measures of performance in accordance with GAAP. The table below reconciles the GAAP measure of Long-term debt to Net debt.

The "Total debt-to-book capitalization" ratio is calculated as the sum of Short-term debt and Long-term debt divided by the sum of Short-term debt, Long-term debt and Total shareholders' equity. The "Total net debt-to-book capitalization" ratio is calculated as the sum of Net debt (see above) divided by the sum of Net debt and Total shareholders' equity.

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NON-GAAP INFORMATION

These non-GAAP measures should not be considered in isolation or as a substitute for measures of performance calculated in accordance with GAAP. In addition, because these measures are not calculated identically by all companies, the presentation here may not be comparable to other similarly titled measures of other companies.

Reconciliations

of

these

non-GAAP

measures

to

the

most

relevant

GAAP

measures

can

be
found
in
the

company's earnings press releases for the relevant periods and on the Company's website.

See the tables attached to our February 2, 2010 earnings press release for a reconciliation of the non-GAAP measures included herein with the most relevant GAAP measures.

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