

July 23, 2015

NEW SUPREME COURT RULING PROVIDES HOPE FOR COAL COUNTRY

Natural Resource (/full-blog?category=Natural+Resource)

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“Coal keeps the lights on.” You can find this phrase plastered on billboards, license plates, and bumper stickers throughout Kentucky and West Virginia. These states comprise “coal country,” a place where the words of this clever phrase run deep.^[i] Coal literally keeps the lights on in these two states, as more than 90% of electricity in both states comes from coal.^[ii] Additionally, this resource helps to produce almost 40,000 jobs in the two states combined, providing many individuals and families with an income to actually “keep the lights on.”^[iii] The coal industry has been under attack in recent years, with the EPA proposing a rule in June of 2014 that was considered “one of the strongest actions ever taken by the U.S. government to fight climate change.”^[iv] However, a recent Supreme Court decision blocking this stringent regulation may just keep the lights on a little longer for the coal industry.^[v]



(<http://static01.nyt.com/images/2012/12/20/business/COAL/COAL-superjumbo-v2.jpg>)

Although coal has historically proven to be economically beneficial in many states, the emissions produced by coal-fired power plants and the methods of mining the finite resource have negative environmental effects. It therefore comes as no surprise that environmental agencies have made it their mission to take out coal once and for all.

In June of 2014 the Environmental Protection Agency proposed a rule that sought to reduce carbon dioxide emissions from existing power plants up to 30% by the year 2030.[vi] This drastic proposition specifically targeted more than 600 existing coal-fired power plants in the United States. [vii] Together these plants are responsible for producing 38% of the nation's carbon dioxide emissions, the majority of which are produced by older, less efficient, plants.[viii] The EPA intended to finalize the rule by mid 2015, giving states only one year to develop steps for implementation.[ix] Yet, despite the two-year heads up, many private power companies knew they would never be able to comply with the proposed rule's strict standards. Even if compliance was a possibility, many power companies would be forced to prematurely shut down plants, cut hundreds of jobs, and invest billions of dollars in capital.[x] This would cause an increase in electricity costs at a time when those states and families dependent upon coal would struggle the most.[xi]

Almost 20 states, as well as other industry groups and private companies, challenged the EPA's proposed rule, claiming "the agency had failed to take into account the punishing costs its rule would impose." [xii] Luckily, the Supreme Court felt the same way. On June 29, 2015, the Supreme Court ruled in a 5-4 decision "it is not rational...to impose billions of dollars in economic costs in return for a few dollars in health or environmental benefits." [xiii] The EPA claimed they were not required to consider costs when developing the regulation, but also claimed that once they did take them into account the benefits greatly outweighed the costs.[xiv] Ultimately, the Supreme Court's decision did not strike down the EPA's proposed rule, but rather remanded it to a lower court for further consideration.[xv]

Although this decision is viewed as a victory for the coal industry, it may be too late for many power plants that have already been shut down, or that are in the process of shutting down.[xvi] Additionally, the EPA has been vocal in characterizing the Supreme Court's ruling as "very narrow" – applying only to "the EPA's process for writing limits on mercury, arsenic and other toxic air pollutants from power plants." [xvii] This, therefore, allows the EPA to pursue other programs that target other sources and types of air pollution.[xviii] Only time will tell whether the Supreme Court's ruling will actually help the coal industry, but the decision certainly signals to the EPA that they cannot act without full justification for the standards it sets.

[i] Reid Wilson, *The states that will be hit hardest by the EPA's coal regulations*, The Washington post (June 2, 2014),

<http://www.washingtonpost.com/blogs/govbeat/wp/2014/06/02/the-states-that-will-be-hit-hardest-by-the-epas-coal-regulations-in-one-map/>.

[ii] *Id.*

[iii] U.S. Energy Information Administration, *Annual Coal Report 2013 (2013)*, available at

<http://www.eia.gov/coal/annual/pdf/table18.pdf>.

[iv] Coral Davenport, *Obama to Take Action to Slash Coal Pollution*, NY Times (June 1, 2014),

http://www.nytimes.com/2014/06/02/us/politics/epa-to-seek-30-percent-cut-in-carbon-emissions.html?_r=0.

[v] Adam Lipstak & Coral Davenport, *Supreme Court Blocks Obama's Limits on Power Plants*, NY Times (June 29, 2015),

http://www.nytimes.com/2015/06/30/us/supreme-court-blocks-obamas-limits-on-power-plants.html?_r=0.

[vi] Juliet Eilperin & Steve Mufson, *Everything you need to know about the EPA's proposed rule on coal plants*, The Washington Post (June 2, 2014), <http://www.washingtonpost.com/national/health-science/epa-will-propose-a-rule-to-cut-emissions-from-existing-coal-plants-by-up-to-30-percent/2014/06/02/?hpid=hp-top-news-story%3Ahomepage%2Ft-story&hpid=hp-top-news-story%3Ahomepage%2Ft-story&hpid=hp-top-news-story%3Ahomepage%2Ft-story>.

[vii] Davenport, *supra* note 4.

[viii] Eilperin & Mufson, *supra* note 6.

[ix] *Id.*

[x] *Id.*

[xi] Press Release, American Electric Power, AEP Shares Plan for Compliance with Proposed EPA Regulations (June 9, 2011), *available* at <https://www.aep.com/newsroom/newsreleases/?id=1697>.

[xii] Liptak & Davenport, *supra* note 5.

[xiii] *Id.*

[xiv] *Id.*

[xv] *Id.*

[xvi] Alex Guillén, *Supreme Court's ruling comes too late for coal*, Politico (June 29, 2015, 7:48 PM), <http://www.politico.com/story/2015/06/supreme-court-coal-ruling-epa-too-late-119569.html>.

[xvii] Timothy Cama, *EPA: Supreme Court ruling won't stop climate rules*, The Hill (June 30, 2015, 3:08 PM), <http://thehill.com/policy/energy-environment/246562-epa-supreme-court-ruling-wont-stop-climate-rules>.

[xviii] *Id.*

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