The Supreme Court’s stay of the Clean Power Plan was a surprise to almost all observers, maybe even to the lawyers requesting the stay. We can only speculate on what the five majority Justices had in mind, since there was no written opinion. The practical impact of the decision is also unclear. E&E news reports that the stay “doesn’t amount to much for many of the nation’s electric utilities, as they were already planning to close down their older coal-fired generating units in the next five to 10 years and move to cleaner sources of electric power.”

There’s another aspect of the case that I’d like to comment on. Industry and conservative states went after a stay for EPA’s effort to regulate CO2 from existing power plants. But they didn’t try to get the Court to stay the EPA regulation for new power plants, which industry insists will essentially outlaw new coal-fired plants. Given that no new coal-fired plants are expected in the next few years anyway, it would have been awfully hard for them to claim irreparable injury. In fact, it’s not clear they are suffering any actual “injury in fact,” a requirement for standing. Still, this is symptomatic of the way that the new plant rule has flown under the radar, getting far less attention from politicians than the new source rule. I take that silence to be a tacit admission that coal has a tenuous future; the main question is how long it takes to phase out the existing plants.