Summary

The Trump Administration relied on a bogus emergency to keep decrepit coal-fired power plants in operation. The D.C. Circuit has blown the whistle on this abuse of power. Dealing with electricity generation is a state responsibility, and the Feds can jump only when there is a need for emergency action that a state can't provide.

“Trump digs coal” was one of his 2016 slogans.   Despite the photos of him with a miner’s hat, it’s hard to imagine the fastidious real estate developer even agreeing to touch a lump of coal, let alone handle a shovel deep underground. But his passion for the coal industry seems real, resulting in a series of emergency orders to keep coal-fired power plants from closing. This last-ditch effort met its Waterloo in a new D.C. Circuit decision declaring the orders illegal.

Trump didn’t have much to say about coal in his 2024 campaign, but he returned to the issue soon after entering office. Two of his executive orders singled out the coal industry for special government support. A 2026 order, entitled “Strengthening United States National Defense with America’s Beautiful Clean Coal Power Generation Fleet,” declares that “it is the policy of the United States that coal is essential to our national and economic security.”   An earlier executive order devoted to “America’s Beautiful Clean Coal Industry,” declared “the policy of the United States that coal is essential to our national and economic security.” That order made it “a national priority” to abolish regulations that reduce coal production and to increase domestic use and exports of coal. The Department of Energy embarked on a series of emergency orders to implement these measures.

Like many administration efforts, this one was long on ideology and short on economics. The Department of Energy used emergency powers to force seven fossil fuel electricity generators (nearly all coal fired) to operate past their retirement dates. In one case, the owners of a coal-fired plant unsuccessfully asked the government not to renew the emergency order for what they said was their least efficient power plant. Another plant owner is seeking tens of millions of dollars in reimbursement for the cost of keeping the plant open. A third plant owner estimates that the costs of keeping a plant running for an additional year could be up to $150 million. Two of the plants covered by the orders produced no power at all in the first quarter of 2026 and another closed for repairs in June.

These efforts to keep coal plants open past their retirement dates appear to be unprecedented. Prior emergency orders had been requested by states and prompted by crises like severe weather events requiring an immediate response.

You may be wondering about the "emergency" that was supposed to justify the recent orders keeping these plants open. According to the Department of Energy, it was the risk that most regional grids would face "unacceptable reliability risks within five years" *unless* something changed. You could be forgiven for thinking that calling this hypothetical situation an emergency was something of a stretch.

The legality of the orders reached the D.C. Circuit in a Michigan case involving a coal plant that seemingly everyone except Trump wanted to close. The court found no basis for the order. The opinion avoids directly calling out the government's abuse of power. Instead, it keeps the focus on basic issues of statutory interpretation. The provision granting DOE the emergency power to keep generators running is found in the Federal Power Act (FPA). One of the basic principles of the FPA is that states, not the federal government, regulate electricity generation. The Feds regulate large-scale transmission and wholesale transactions. So, the emergency power is a rare exception to the overriding principle of state control, not a loophole big enough to drive a truck through.

The emergency provision itself is set up as a last resort, to be used only when states and regional transmission authorities have failed to take action. Under the statute, the court said, an emergency is "a grid-reliability risk that calls for an immediate response by DOE in particular" when it "finds the state has not and will not timely take steps that must be taken immediately to avert unacceptable risk to reliability, the need for immediate action." DOE had not shown that the long-range threat to reliability "demands immediate action by DOE outside the ordinary process for assuring reliability."

The court also reproved DOE for giving insufficient respect to the state's own process for ensuring a reliable power supply. "The complexity and advance planning that go into states' assurances of resource adequacy do not imply that DOE must have vast, top-down emergency power to pick its favorite generators to run at all costs, or to abruptly order disfavored units to shut down earlier than planned." "Rather," the court said, "the complexity of state planning processes helps to explain why the Federal Power Act leaves resource adequacy to be managed by states, utilities, and their RTOs [regional transmission authorities]."

As you can see, the court's opinion is notably lacking in rhetorical flourishes. Don't be misled. The court’s very lawyerly analysis is a reproof to the government’s dramatic power grab. Invocation of emergency powers, often with little or no real basis, has been a common tactic by the Administration. It’s time that the courts examine this tactic in the cold, hard light of day.