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Coal: The Changing Political and Policy Landscape
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Since the last time we gathered for this event, a lot has happened—and frankly most of what has happened has not been so good. And to the keynote speaker falls the responsibility to offer a candid assessment, not necessarily a Pollyannaish one.

Let's begin with the good news. One bright spot is the political shift since the 2014 mid-term elections changing control of the Senate and uniting the Congress under one party's control—a party that embraces the value of what our industry provides to our nation, our communities and our workforce. Among members of Congress—Republicans and moderate Democrats—I sense a growing conviction that the Obama administration's regulatory reach may be exceeding its legal grasp and the public's tolerance as well.

On the policy front this development is most welcome. Yet, alone, it may remain inadequate to the task of erasing all the damage done by the President's generous use of the executive pen. With the waning days of the Obama Presidency drawing to a close, we find the road ahead of us has been heavily mined with regulations.

To be sure, we face twin challenges: market forces and destructive policies. The former are for many unexpected, the latter unprecedented. Cutting across both the market and policy seams brings a familiar description to mind. So far as I know, it wasn't anyone from our industry who came up with the phrase "caught between a rock and a hard place." But no phrase better captures the dilemma that our industry finds itself in today.

Let's first look at what I call the rock – that would be today's current market conditions. Energy supply deficits have been replaced by a glut—and coal is not alone in that boat. But it serves us well during these challenging moments to keep an eye on the bigger picture.

Last summer, energy expert and Pulitzer Prize winning author Daniel Yergin offered his view of what our global energy picture will look like 20 years from now. According to Dr. Yergin, the energy world will be "bigger—but not too different." With fossil fuels supplying 82 percent of the world energy today, that share will only be slightly lower 20 years from now as the world uses 35-40 percent more energy.

The International Energy Agency reminded us recently that with demand exceeding 9 billion tons per year out to 2020, "coal is still the backbone of electricity generation worldwide." Over the next twenty-five years, fossil fuels will supply two-thirds of the incremental electricity generation with coal accounting for 40 percent of that growth.

Here at home, a glut of natural gas supply has challenged coal for supremacy in the power markets. But unlike other energy sources propped-up by market-distorting policies, the rise of natural gas has ridden on the back of technology and innovation. In terms of productivity and scale, the shale gas boom is reminiscent of our own industry's advancements in productivity with the deployment of longwall systems, continuous miner super sections and larger surface excavation and haulage equipment across our nation's coal basins.

While tremendous growth in shale gas supply is understandably an unwelcome intrusion upon our dominance in the power markets, we cannot begrudge it as a product of the free market. Unlike renewable energy sources, for example, gas – like coal – is not a creature of generous public subsidies. Coal and gas generate 68 percent of our electricity, yet receive relatively little government support. By contrast, wind and solar take almost two-thirds of total US subsidies yet provide less than 6 percent of generation.

If the market is the "rock", what is the "the hard place"? That is the name I give to the administration's policies arrayed against coal. Specifically, the relentless offensive we face from President Obama's regulators. From EPA's coal mine permit moratorium shortly after taking office to the administration's determination in robbing American's of low cost coal base load power through proposed GHG rules for power plants and its earlier MATs rule, this administration's policies comprise a very hard place for coal producers. Every industry faces a tough market at one time or another. Few, if any, American industries have faced an existential threat launched by their own government.

It is here where the policy geology for coal and natural gas split in one fundamental way. Coal confronts policies designed to not allow it to compete in the marketplace. How else does one explain a proposal to bar the construction of new higher efficiency lower emission coal plants unless they incorporate a technology that has never been demonstrated end-to-end on a commercial power plant?

It is not natural gas prices alone that have separated 45,000 coal miners from their high wage jobs over the last three years. Fuel switching can't account for the estimated 60,000 MW of coal-based capacity forced into early retirement by 2020 or shortly thereafter. Contrary to the administration's false narrative, this is not market driven. It is policy driven. It is asset destruction and its attendant human toll on a massive scale.

Proof for this claim comes from the administration itself. In its 2016 Energy Outlook issued last month, the Energy Information Administration (EIA) shows that under current policies now in effect, coal generation jumps by more than 10 percent out to 2025 as existing plants run at higher utilization rates. In fact, coal generation increases throughout the entire forecast period, retaining more than a third of the market, the largest share of any fuel.

But this scenario changes dramatically, EIA finds, with EPA's proposed Clean Power Plan (CPP). With that market-distorting policy, the impact on coal becomes severe … forcing the closure of almost twice the coal-based capacity than under the current scenario -- and with concomitant degradation of the electric grid and more electricity price increases across the nation.

The Austrian economist Joseph Schumpeter observed that market competition is often merciless. But the result, he famously said, is "creative destruction." What emerges from such convulsions will surpass what is replaced.

What the administration has wrought is not creative destruction. It is reckless destruction of useful assets that contribute affordable and reliable power to an entire nation and businesses that need it to maintain their global competitiveness.

The biggest retirement story this year is not David Letterman. It's the estimated 12,000 MW of coal-based generation that will be retired this year just from the mercury and air toxics rule, with another 8,000 expected next year.

This so-called MATS rule, imposed in 2011, is a classic example -- but unfortunately not the last example -- of irresponsible regulation. By EPA's own estimate, the rule will cost $10 *billion* annually, but provide at most $6 *million* in benefits. To make matters worse, half of those costs come from regulating emissions the agency found do not—yes, *do not*—pose any public health concern. In other words, EPA is asking Americans to pay $1,600 each year in exchange for $1 in speculative benefits. The cost to the nation's power infrastructure – while staggering – was entirely missed by EPA. The agency underestimated the regulatory-induced coal plant retirements by a factor of 10.

That's creative accounting, not creative destruction.

There is nothing creative about the high-wage jobs that are lost. These cannot – and most likely will not – be easily replaced. Certainly they will not be replaced in the very coal communities that have lost them. And few, if any, new jobs will match the wages paid by the jobs destroyed. These communities will feel the loss of jobs, revenue and the hardships on families and dependent businesses will last for generations. The country will feel the loss too. Whenever any coal miner loses his or her job, all Americans lose something—low cost reliable power and perhaps eventually their own job as well.

Nor is there anything creative in the environmental accomplishment of the energy transformation envisioned by these policies. What EPA will have "created" is to simply swap one fossil fuel with another. The 30 percent reduction in U.S. GHG emissions will be achieved at enormous cost – with more than 40 states facing utility bills climbing by double digits. But the impact of this sacrifice on global temperatures will be negligible. Consider that in just one year, 2013, global emissions rose by 630 million tons … or about 90 percent of the total reductions the Administration would achieve in over 15 years with its costly power plan.

Aside from cost, another signal point about the scale of this capacity destruction is that it is all brought about by regulatory fiat, not by congressionally authorized legislation. This largely makes the American voter a passive observer to a transformation of the power grid that will pick their pockets for years to come. The marginalization of Congress – especially by an administration that piously touts its concern for ordinary Americans – is particularly worrisome.

The result is that regulators thus have become a virtual fourth branch of government, unelected and unaccountable. The President and his administration's defenders constantly disparage a "do nothing" Congress. But when Congress chooses to "do nothing" that usually means the American people don't want to do what the administration wishes.

When our industry launched litigation to stop EPA from imposing the CPP, the rule's defenders dismissed the lawsuit as obstructionism. Last week an environmental attorney – without a trace of irony – dismissively called the lawsuits by Murray Energy and 12 states as "an end around due process." Overlooked is that obviously most cherished form of due process of submitting consequential policies to our elected representatives in Congress for approval. By going around Congress with aggressive and unbalanced regulations, it is the administration that is doing an "end around" the American public.

The reason is American voters don't want what the administration is selling. Last month's Gallup Poll again showed that climate change ranks near the rocky bottom of issues that Americans are concerned about. Congress has repeatedly rejected the very scheme for controlling GHG that EPA now wants to impose on the states by regulatory fiat. Congress is understandably reluctant or unwilling to impose a carbon trading scheme or a carbon tax—both central features of EPA's costly power plan. No wonder the president wants to avoid asking Congress for permission to imperil a power grid anchored by coal – a grid that saves Americans $93 billion in electricity costs annually and reduces the volatility of their power bills by half.

Imagine if Congress proposed a $1 trillion tax bill what the outcry would be? That is less than the cost of just two rules—the Clean Power Plan and Ozone standards—EPA is on track to issue over the next several months.

This would be bad enough if the administration would level with the American people about its true intent, about the costs they will likely bear to create its preferred energy future. Instead, an administration that promised transparency has offered patronizing assurances. It claims to regulate solely in the interest of creating certainty for the market, for business and for investment. But in every case – from rules on power plants to actions against mining permits – the only certainty they deliver is the certainty of more mine closures, more miners out of work and more litigation.

The administration now promises federal assistance to stricken Appalachian coal communities. But it is these regulations that have so often left communities distressed in the first place. The administration may deny they are waging a "War on Coal," but this sure looks like war reparations.

To call this kind of governing deceitful may go too far. But to call it transparent or responsible is far too kind.

That brings me to a final point. There may be little more we can do to cope with a challenging marketplace beyond what we're already doing. We face a difficult re-alignment of supply and demand. This has obviously not been painless but we have been left with few options. That's the rock we're up against.

As for the hard place we're up against –the policies that will not allow us to compete – there is more we can do and NMA is busy doing it.

Since the mid-term elections, we have seen a new Congress favor a more balanced energy policy and regulatory restraint. Clearly Congress has been helpful to our cause. Congressional oversight hearings in both the House and Senate have held the administration's feet to the fire. On regulations aimed at our operations and our markets … we have helped Congress question the agencies about the need for—and the cost of—more of these regulations.

We have worked with our congressional allies on authorizing legislation that would curb EPA's lawless behavior. Appropriations bills are advancing with provisions that would stymie some of the most burdensome rules.

While our allies in Congress have the appetite, the institution as a whole may lack the power to overturn all of the administration's regulatory excess. In the Senate, the margins remain insufficient to override filibusters or presidential vetoes that threaten our legislative solutions.

So NMA has taken our objections to the courts as well as to Congress. In cases before the Supreme Court and the D.C. Circuit, we have made compelling arguments for curbing the administration's regulatory appetite. We should hear soon from the Supreme Court about the future of EPA's MATS rule. Last week the D.C. Circuit declined industry's motion to halt EPA's Clean Power Plan before it is unleashed.

But it ruled solely on procedural grounds, saying it was powerless to halt a proposed rule. When the rule is finalized this summer, we will be back, and the verdict may be different. EPA got only a temporary reprieve, not a stay of execution. We believe the law is on our side. But that is for the courts to decide.

The fact remains that whatever influence we can bring to bear from Washington cannot alone change all of the bad policies bringing bad consequences for our mining communities. The ancient Greek philosopher Archimedes described our dilemma very well when he illustrated a fundamental principle of physics. He said: “Give me a lever long enough and I can move the world.” Well, our lever from Washington is not long enough to lift our entire agenda. We have to look beyond Washington as well.

We are going back to the states with a renewed sense of urgency. Nothing illustrates this effort more than our Count on Coal campaign in states to persuade governors to reject EPA’s Clean Power Plan. EPA is asking them to reconstruct their power systems with faulty blueprints. Blueprints based on implausible assumptions about the feasibility of squeezing more efficiencies from power plants burdened by the MATs rule, dispatching more expensive electricity over lower cost sources, requiring some power plants to run less and others more, building new plants and infrastructure to fill the federally-induced power gap and mandating businesses and households survive on less electricity. Governors have a better choice than to accept EPA-mandated restrictions on their states’ electric grid that will raise rates and weaken reliability.

Roman emperors required their architects to sleep under the bridges they built … just to be sure. We are telling governors they do not need to sleep under bridges that EPA builds for them. Their choice—one allowed by law—to not submit a state plan to implement EPA’s costly power plan we believe is far less costly and less risky for their citizens.

The administration’s overreaching is now dramatizing what we have been saying for several years – it is not a War on Coal we face. It is a campaign that will harm many others before it is done.

For now though, the burden is borne mostly by us. We are an industry adjusting to a market threatened by the current government. If we have learned anything so far, it is the lesson captured in the observation of the French philosopher Voltaire: “It is dangerous to be right in matters about which one’s government is wrong.”