THE COAL TRAP: A BROADSIDE AGAINST WEST VIRGINIA ENERGY POLITICS AND ECONOMICS

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The author of *The Coal Trap*, James Van Nostrand, speaks with some authority in this blistering indictment of how politicians and utility regulators have sheltered the Appalachian coal industry from trends generally impacting the nation's electric generation business.[1] Van Nostrand flashes his credentials in the opening pages, noting he is the son of a celebrated Iowa utility regulator, Maurice Van Nostrand; worked at the New York Public Service Commission for five years following law school; and represented large electric and gas utilities at a major law firm in the Pacific Northwest for roughly half his career before turning to the groves of academe.[2]

At the time of his midlife job change, the convergence of energy law with environmental practice accelerated with the Supreme Court's 5-4 decision in *Massachusetts v. EPA*, ruling that carbon dioxide emissions fell within the agency's regulatory reach as a "pollutant" under at least one provision of the Clean Air Act.[3] Van Nostrand acknowledges he had little appreciation of climate change prior to his "road to Damascus" moment after he joined the Pace University faculty.[4] There, upon taking charge of the school's Energy Project, he became steeped in environmental law (a specialty at Pace), eventually taking an advanced law degree in the subject.[5] His next stop, in 2011, landed him in the lion's den: he accepted a newly created teaching post as director of West Virginia University Law School's Center for Energy and Sustainable Development.[6] The law school's dean explained she envisioned the Center as a "counterbalance, of sorts, to the dominant role of the extractive industry" and its environmental impacts in the state.[7] *The Coal Trap,* coming some 10 years after his appointment, indicates Van Nostrand took the dean at her word.

One of Van Nostrand's organizing principles is to view the ten years from 2009 to 2019 as a "lost decade" – a framework he repeatedly invokes in interrogating the wisdom of the state's local and Congressional leadership.[8] Another

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1. JAMES VAN NOSTRAND, THE COAL TRAP: HOW WEST VIRGINIA WAS LEFT BEHIND IN THE CLEAN ENERGY REVOLUTION (2022) ("*The Coal Trap*").

2. *Id.* at 2. Van Nostrand mentions that his culminating achievement was "gaining national recognition from the Energy Bar Association as the State Regulatory Practitioner of the Year in 2007," leading him to conclude "it seemed I didn't have much more to accomplish in private law practice." *Id.* at 3.

3. Massachusetts v. EPA, 549 U.S. 497 (2007).

4. *The Coal Trap*, *supra* note 1, at 3-4.

5. *Id.*

6. *Id.* at 4-5.

7. *Id.* at 4.

8. *The Coal Trap*, *supra* note 1, at 1 (where the notion is introduced).

recurrent theme, one with profound sociological implications, is that the natural resource bounty West Virginia boasts – coal mining since the early 19th century, natural gas drilling since the mid-2000s – is more a curse than a blessing. While this may seem a rather striking assertion since much of the state's economy has looked to coal as its defining industry and, more recently, has hailed the discovery of the Marcellus Shale as a second godsend even as coal mining has waned, the author argues that overreliance on extractive industries often leaves states (or entire nations) underdeveloped because other businesses capable of supporting a more diversified economy with broader employment can't get much of a toehold. This notion of a "resource curse," as the author frequently puts it, is etched into the very title of *The Coal Trap.*

I. THE EPA COMES GUNNING FOR COAL

Van Nostrand chooses the year 2009 as his starting point for the "lost decade" because it coincides with the arrival of the Obama Administration and a concomitant wave of proposed regulations aimed at tamping down coal-burning emissions.[9] Carbon dioxide, once the EPA was emboldened by the *Massachusetts v. EPA* ruling, became target No. 1, but the Mercury and Air Toxics Standard (MATS) rule issued in 2012 played no small part in eroding the viability of several of West Virginia's older coal-fired plants (and associated mining), as well as numerous plants throughout the country.[10] And while the MATS rule was ultimately rejected by the Supreme Court in another 5-4 ruling[11] the damage was done via anticipatory closure of coal plants rendered uneconomic if they had to comply.[12]

The Obama Administration also took aim at coal mining accomplished by dint of mountaintop removal – a practice that, as Van Nostrand relates, has devastating environmental impacts on the ecosystems and communities in the vicinity of the project.[13] Here, no new regulations were needed – only a more coordinated (and stringent) review and permitting process conducted by the three federal agencies involved (the EPA, the Department of Interior, and the Army Corps of Engineers) in applying statues already on the books.[14] Pursuant to a June 2009 memorandum of understanding among the three agencies, the government sharply reduced the number of approved mountaintop removal projects and presumably blunted the deleterious impacts of those projects allowed to proceed.[15]

A crowning endeavor of the Obama Administration to crack down on CO2 emissions is recounted extensively in the section headed "EPA Adopts the Clean Power Plan."[16] Van Nostrand candidly acknowledges that "[t]he Clean Air Act is

9. *Id.* at 5.

10. 549 U.S. at 497.

11. Michigan v. EPA, 576 U.S. 743 (2015).

12. *The Coal Trap*, *supra* note 1, at 25-30.

13. *Id.* at 21-25.

14. *Id.* at 22. The relevant statutes are the Clean Water Act and the Surface Mining Control and Reclamation Act of 1977. *Id.*

15. *Id.* at 23-24. In 2010, EPA issued tougher new water quality standards that "effectively blocked MTR projects from dumping wastes and other pollutants in streams near surface coalmines." *Id.* at 24.

16. *The Coal Trap*, *supra* note 1, at 30-39.

not a great tool for regulating GHG [greenhouse gas] emissions," since CO2 "is invisible and odorless and does not directly lead to the sort of health impacts associated with most of the pollutants regulated under the Clean Air Act."[17] Nonetheless, as he continues, President Obama had become frustrated with his inability to get new GHG legislation (such as "cap and trade") through Congress and turned to the "only remaining tool available."[18] The Clean Power Plan (CPP) – a complex construct envisioning forced "generation shifting" (requiring utilities on a differentiated state-by-state basis to avail themselves of lower-carbon generating sources to achieve prescribed CO2 emission reductions) – gestated over several years and emerged as a final regulation in August 2015.

From there, the ambitious EPA scheme encountered major resistance in the form of litigation, with West Virginia's Attorney General taking the lead. Political cover was not lacking either: Senator Joe Manchin claimed that the CPP exemplified the "Administration's demonizing coal . . . [aiming to] regulate coal into extinction."[19] The governor, for his part, termed the plan "unreasonable, unrealistic, and ultimately unattainable for our state."[20] In reality, Van Nostrand posits, the 37% reduction in emissions prescribed for West Virginia, did not "warrant the widespread 'the sky is falling' response" and could have been attained "in a relatively painless manner that would actually produce positive results for the state in terms of job creation in the emerging clean energy sector."[21]

But it all became moot: the U.S. Supreme Court took the highly unusual step in early 2016 of staying the CPP while litigation proceeded (implying a majority of justices thought EPA was not likely to succeed on the merits).[22] And while the legal fortunes of the CPP received a boost when a much-reduced version of the regulation substituted by the Trump Administration's EPA was rejected and remanded to the agency in early 2021 by the D.C Circuit Court of Appeals, Van Nostrand anticipated that the resuscitation of the Obama-era CPP in the Biden era might eventually experience tough going before the Supreme Court, bolstered by several new conservative members.[23] And that is exactly what happened: the 2015 version of the CPP was held beyond the scope of the Clean Air Act in a ruling coming not long after *The Coal Trap* was published.[24]

Moreover, despite the ruckus over the CPP and its tortured history in court, it all didn't matter much, or so argues Van Nostrand. This converges with another major theme of *The Coal Trap*: that coal-fired generation was sunsetting anyway,

17. *Id.* at 30.

18. *Id.*

19. *Id.* at 32.

20. *The Coal Trap*, *supra* note 1, at 32.

21. *Id.* at 33.

22. *Id.* at 37.

23. *Id.* at 39.

24. *See* West Virginia v. EPA, 142 S.Ct. 2587 (2022). To his credit, Van Nostrand, despite his apparent sympathy for the goals of the CPP and belief it would not damage the economy, conceded in his discussion that the EPA's interpretation of an "obscure" provision of the Clean Air Act was an "aggressive one." *The Coal Trap*, *supra* note 1, at 34.

thanks to the emergence of plentiful shale gas and the increasingly cost-competitive price of renewable generation. As the author puts it in his "Shale Gas Revolution" chapter:

> Within six years [of 2007], natural gas would surpass coal as the leading source of fuel for electricity generation, due to its lower cost and the high efficiency of new natural gas fired combined cycle combustion turbines, especially when compared with the economics of the region's aging fleet of coal plants . . . . Continuing down the coal path simply could not be justified as a matter of economics, even without considering the adverse environmental impacts associated with virtually every stage of extraction, processing, and combustion of coal to generate electricity.[25]

This bleak vision for the future of coal, Van Nostrand recognizes, would not win him many popularity contests in his chosen state of residence. Early in the book, he invokes the "lure associated with the distinct respect commanded by coal miners in West Virginia," quoting at length a resonating speech by former Senator Robert Byrd following a pair of mining disasters in 2006:

> Our Nation's coal miners are vital to our national economy. During World War I, coal miners put in long, brutal hours to make sure that the Nation had coal to heat our homes, power our factories, and fuel our battleships. In World War II, American coal miners again provided the energy to replace the oil that was lost with the outbreak of that global conflict.[26]

But instead of reminiscing on the past glories of the industry on the Senate floor or in the "lost decade" to follow, Van Nostrand contends the state would have been better off repositioning itself to take full advantage of newer technologies for producing power.

II. FRACKING: HOW DOES THAT WORK, AND HOW DID IT WORK OUT FOR WEST VIRGINIA?

Van Nostrand has an interesting take on the shale revolution and its peculiar impacts on West Virginia's electric energy infrastructure. His contention is that, while the advent of shale gas fracking employing improved drilling technologies struck gold, as it were, in West Virginia (along with other Appalachian states), the benefits largely bypassed the state during the "lost decade" due to the hidebound electric utility culture – with residents suffering the consequences. Following a commendably cogent explanation of how fracking is now accomplished with the aid of technological advancements and how it triggered quite the drilling boom in the Marcellus shale region, the author zooms in on the paradoxical repercussions for West Virginia ratepayers.

His core argument is that, while wholesale electricity markets saw dramatic price drops as cheaper natural gas generation, propelled by ever-improving combined cycle gas turbine (CCGT) generation equipment,[27] swamped the FERC-regulated exchanges, squeezing out coal as the power source of choice, West Virginia clung to the solid fossil fuel. Indeed, in a section entitled "West Virginia Utilities Take a Pass on Gas," Van Nostrand states that the two major in-state

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25. *The Coal Trap*, *supra* note 1, at 43.

26. *Id.* at 9.

27. *Id.* at 53. An "advanced design" for CCGT units entered the market around 2015, upgrading the efficiency and economies of scale. *Id.*

electric utilities – FirstEnergy and American Electric Power – "generated nearly 100 percent of their electricity with coal plants throughout 'the lost decade' and pretty much continue to do so today."[28]

The author lays this failure – and the missed opportunity to materially lower power costs for ratepayers – at the door of "policymakers . . . from the Governor, to members of the legislature, to the commissioners on the West Virginia Public Service Commission (PSC)" who would have regarded leaning into gas generation as an "act of disloyalty" to the venerable coal industry and its miners.[29] The public utilities, for their part, shirked the national march towards natural gas-fired generation, charges Van Nostrand, because there would be no consequences from a PSC whose record represents a "failure . . . throughout the 'lost decade' to perform its essential function of protecting ratepayers . . . ."[30] Strong stuff, to be sure, and the direct results, the author states, were rate increases between 2008 and 2020 "five times the national average."[31]

Yet another portion of Van Nostrand's "lost decade" panorama depicts how independent power producers (IPPs) attempted to fill the void left by the franchised public utilities, only to get cut off at the pass. He recounts multiple instances of IPP-announced plans to construct major gas-fired power plants in West Virginia that were obstructed by enquiries, hearings, and legal challenges – some launched by public officials, others by coal industry groups. While the various objections were thin at best and eventually were denied, the delays occasioned proved fatal to the realization of many such projects. The book offers a detailed account of how this went down.[32]

Yet another shoe drops when *The Coal Trap* marshals evidence that the glittering promise of widespread prosperity from the Marcellus shale gas reserves in West Virginia ended up providing, instead, another chapter in the state's "resource curse" saga.[33] Van Nostrand describes a handful of major *non*-generation project announcements predicated on the abundance of local natural gas, of which little actually came to fruition. Moreover, a regional study cited by the author reflected that job growth in the counties where shale fracking is centered was a mere 4% between 2008 and 2019 – better than the state's overall average (a *drop* of 2.9%), but materially worse than the national average over that period (plus 10%).[34]

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28. *Id.* at 54.

29. *The Coal Trap*, *supra* note 1, at 53.

30. *Id.* at 54-55.

31. *Id.* To provide a complete picture, it should be noted that, despite losing some of its edge, West Virginia's retail electricity rates in 2020 – the year after Van Nostrand's "lost decade" – remained among the lowest in the country – almost two cents below the national average of 10.59 cents/kwh, almost a full cent per/kwh below the neighboring state of Pennsylvania, and fractionally below the neighboring states of Ohio and Virginia. *State Electricity Profiles*, ENERGY INFO. ADMIN. (Nov. 4, 2021), https://www.eia.gov/electricity/state/.

32. *The Coal Trap*, *supra* note 1, at 55-59 ("The Failed Promises of Natural Gas Resource Curse Revisited").

33. *See id.* at 59-62.

34. Of course, county or state-wide studies of *widespread* economic benefits don't reflect *individualized* benefits to landowners leasing their oil and gas rights to drillers – a wealth stream that must have received a boost from significantly higher natural gas prices in 2022, versus the study period covered by *The Coal Trap.*

III. RENEWABLES LOOM LARGER

In his third chapter, "The Rise of Renewable Energy," Van Nostrand relies on independent study data to show that renewable energy was a "distant third" in driving the reduction in U.S. coal production, second to the surge in natural gas (responsible for 49%) and a decline in end use demand (26%).[35] However, the impact of renewables was "much greater" at the end of the study period (2011 to 2017), he adds. The author suggests the coal industry has only itself to blame, having "decided to spend its 'energy' in the political arena, complaining about the 'war on coal' allegedly being waged by the Obama administration and its environmental regulations" when it could have been investing in improved technological proficiency, as were the natural gas and "clean energy" renewables industries.[36]

Readers may reflect, however, that at least some investment has taken place on a U.S. and global scale in carbon capture, sequestration, and use – a set of enabling technologies to circumvent the primary climate change objection to coal burning – and that the "political" spend of the industry and its allies made at least a dent by securing greater tax incentives for carbon capture projects brought into operation in the Inflation Reduction Act of 2022 passed in August.[37] Coal-fired generation has certainly receded in the wake of natural gas's multi-year renaissance and the improved economics and efficiencies of solar and wind power, but to speak of the "demise of the coal industry," as Van Nostrand does in Chapter 3,[38] arguably goes a bit too far. A U.S. Energy Information Administration report indicates that the electric power sector actually produced *more* coal generation in 2021 than in the prior year (rising to 23% of the U.S. total), although this market share is expected to ease to 20% in 2022, as the ability of the coal industry to meet demand has constrained further inroads in its domestic market share (especially with foreign exports on the rise).[39]

The author faults the state's energy policy leadership for failing to incentivize renewable energy development, although precisely because of this lack, renewables have had a minimal effect on the retreat of the coal industry.[40] The main point of Van Nostrand here is that the state, with its lack of renewable portfolio standards or "rigorous" integrated resource planning, has missed out on the opportunity for a "diverse electricity generating portfolio" to provide a check on the "spiraling electricity costs" of the state.[41]

The third chapter is crucial because it contains Van Nostrand's longer-term prophecy that coal is on its way to being ousted from the generation mix in this country, as other fuels and renewables shoulder out coal in the cost curve. The

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35. *The Coal Trap*, *supra* note 1, at 63.

36. *Id.*

37. *See Inflation Reduction Act Expands the Carbon Capture and Sequestration Tax Credit*, JONES DAY, https://www.jonesday.com/en/insights/2022/08/inflation-reduction-act-expands-carbon-capture-and-sequestration-tax-credit.

38. *The Coal Trap*, *supra* note 1, at 63.

39. *U.S. coal-fired generation declining after brief rise last year*, ENERGY INFO. ADMIN. (Oct. 27, 2022), https://www.eia.gov/todayinenergy/detail.php?id=54419.

40. *The Coal Trap*, *supra* note 1, at 64.

41. *Id.* As previously noted, however, West Virginia still had among the lowest retail electricity costs in 2020, despite its having lost some of its edge. *State Electricity Profiles*, *supra* note 29.

book leans especially hard on the thesis that the time for "clean" renewables has arrived and a radical transition is under way:

For many of the reasons described earlier in this chapter – including that continuing improvement in the cost effectiveness of wind, solar, and battery storage technology – the economic case for coal-fired generation will continue to deteriorate.[42]

Indeed, Van Nostrand cites a 2021 report estimating that 72% of coal capacity is "uneconomic" – a jump of 10 percentage points from that source's estimate in 2020.[43] And in the same chapter, the author takes it a step further, citing a report issued in 2021 by the Institute for Energy Economics and Financial Analysis (IEEFA) suggesting that the days of natural gas are numbered as well:

> The story is not much better for the "other" fossil fuel in West Virginia, natural gas. Of further concern to West Virginia policymakers hoping to continue to ride the fracking boom is IEFFA's conclusion that the "gas bridge" – the notion that natural gas provides a "bridge" between coal as the primary source of electricity generation and a future reliance on renewables – is now "closed" [as solar and wind] are now the least-cost option across much of the United States.[44]

The "closure" of the so-called bridge, Van Nostrand hypothesizes, is certified by the "growing evidence of methane emissions throughout the gas production, distribution, and consumption chain," nullifying any perceived advantage of natural gas over coal in emitting less greenhouse gasses.[45]

The chapter ends with an acknowledgement that the development of renewable resources in West Virginia, while slow as molasses ("there was very little movement toward renewable energy in West Virginia during the 'lost decade'"), has picked up its pace in the last couple of years. Van Nostrand cites specific examples of project announcements and legislative initiatives to expedite utility-scale solar projects.[46] Some wind or solar projects are being spawned by IPPs, while AEP – which Van Nostrand accuses of slow-rolling renewable development in West Virginia in deference to the PSC's preferences – is participating in a 115 MW wind project by purchasing output through a subsidiary in tandem with a Toyota plant aspiring to entirely clean energy consumption.[47]

Summarizing the full content of *The Coal Trap* – a contribution to energy literature which could find a place in a college or law school course – would take many more pages, but the following checklist of the volume's additional chapters (*i.e.,* those not discussed in some detail already) will give the reader a fair idea.

- *From "Friends of Coal" to the "War on Coal": How West Virginia Went from Blue to Red* (Chapter 5):[48] Here, the book traces the public relations campaign conducted by the coal industry during a time

42. *The Coal Trap*, *supra* note 1, at 72.

43. *Id.*

44. *Id.* at 69.

45. *Id.*

46. *The Coal Trap*, *supra* note 1, at 74.

47. *Id.*

48. *Id.* at 97-119 (Chapter 5: "From 'Friends of Coal' to the 'War on Coal': How West Virginia Went from Blue to Red").

of plummeting coal mine employment (due to mechanization), a shrinking role for the United Mine Workers in communities, and growing environmental damage concerns (especially from mountaintop removal mining) to enhance the image of the industry as still central to West Virginia's identity and economic well-being. The author also elaborates on how the industry and its political allies blamed the Democratic Party's so-called "war on coal" for the decline of the industry, a political maneuver that effectively converted the state from a Democratic to a Republican stronghold.

- *Leadership from Washington, D.C. – The Congressional Delegation that Could Have but Didn't* (Chapter 6):[49] Van Nostrand charges the state's elected representatives to Congress with jumping on the "war on coal" bandwagon during the "lost decade." With large helpings of political lore, the chapter focuses on the roles of major figures like Senators Robert Byrd and Jay Rockefeller (who also served as Governor), both of whom had mixed records during their long careers on supporting coal industry positions. The book credits Byrd with "evolving" late in his political life towards accepting the reality of climate change and the need for the state to diversify its economy. At times, Rockefeller ran interference for the coal industry but at other times chastised the industry for its anti-environmental positions, including its opposition to addressing climate change. There are also portraits of Sen. Shelly Moore Capito (a strong pro-coal, anti-EPA advocate) and Rep. David McKinley (whom Van Nostrand credits with taking a "middle ground" between coal industry positions and climate policies).[50]
- *Manchin in the Middle* (Chapter 7):[51] Like other West Virginia figures profiled in the book, Joe Manchin hails from a "minor" political dynasty. He served in statewide and Congressional office capacities since 1982, rising to a position of extraordinary influence in 2021 as the "most conservative Democrat in the Senate," and a vital vote in getting legislation passed with the parties splitting the Senate 50-50.[52] The chapter describes Manchin's dedication to bipartisanship, as well as his "longstanding ties to the coal industry,"[53] and takes a deep dive into the senator's alleged conflicts of interest and defense of the coal business against Obama Administration coal and climate initiatives. However, the section points out, Manchin has publicly acknowledged that climate change is real and human activity has a lot to do with it – though "elimination of fossil fuel

49. *Id.* at 120-139 (Chapter 6: "Leadership from Washington, D.C. – The Congressional Delegation that Could Have but Didn't").

50. The book notes that McKinley, a "moderate," faced a difficult primary in May 2022 running against another Congressman, Alex Mooney, due to redistricting (with W. Va. losing a seat). *The Coal Trap*, *supra* note 1, at 138. In the event, the Trump-backed candidate won the election (after publication of *The Coal Trap*).

51. *Id.* at 140 *et seq*. (Chapter 7: "Manchin in the Middle").

52. *Id.* at 140.

53. *Id.* at 145.

use [is] not practical."[54] The entire chapter amounts to a mini-biography of Joe Manchin and his outsized role in shaping energy (and fossil fuel) policy, but Van Nostrand dismisses Manchin's mantra that climate change may be addressed through "innovation, not elimination" in the use of fossil fuels as bunk. Central to the author's contention are his twin beliefs that coal can no longer be regarded as a cost-effective fuel and that "there is no breakthrough 'clean coal' technology on the horizon" that can save the industry by dint of "innovation."[55] The book also skewers Manchin for foiling the Biden Administration's "Build Back Better" bill, which Van Nostrand portrays as a "tremendous windfall" for West Virginia.[56]

- *The Failure of the Public Service Commission (PSC) to Serve the Public* (Chapter 8):[57] As the title suggests, this chapter enlarges on the book's earlier contention that the WVPSC has been a supine and abject failure at holding the coal-burning utilities serving in the state accountable. Van Nostrand delves extensively into the personalities and history of actions by the leadership and institutions responsible. This excerpt gives a good idea of how the author unloads on the regulators:

> it is fair to say that the decisions made at the PSC while Mike Albert was chair were a good deal for the coal industry – no diversification whatsoever away from using coal to generate electricity, and frequent bailouts of coal-burning utilities by authorizing uneconomic coal plants to be placed on the backs of West Virginians during 'the lost decade' – and a very bad deal for ratepayers.[58]

Van Nostrand also details the history of "integrated resource planning" (IRP) by West Virginia utilities, which he describes as nonexistent (at least in a way that allowed public scrutiny) before 2014, and only marginally improved when the state legislature mandated IRP. No less critical is the chapter's account of how West Virginia utilities have addressed demand-side management and conservation approaches – a performance he labels "dismal."[59]

- *The Role of the Legislature in West Virginia's Failed Energy Policies* (Chapter 9):[60] Van Nostrand makes space in his rogues gallery for the state's elected representatives, which "has done more than its share" of harm.[61] Most prominently, he charges the body with

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54. *The Coal Trap*, *supra* note 1, at 153.

55. *Id.* at 161.

56. *Id.* The book was published before the revised, reduced version of "Build Back Better" was passed with Sen. Manchin's support.

57. *Id.* at 165 *et seq.* (Chapter 8: "What the Future Could Hold if Leaders Choose to Lead").

58. *The Coal Trap*, *supra* note 1, at 168.

59. *Id.* at 181. It should be mentioned that the author draws a distinction between the West Virginia public utilities controlled by FirstEnergy and those by AEP. *Id.* at 190. The former has pursued "Neanderthal policies" while the latter has been "more enlightened." *Id.* at 188, 190. The book also portrays the WVPSC staff as obstructive in getting conservation and demand response programs implemented. *Id.* at 165-68.

60. *Id.* at 195 *et seq.* (Chapter 9: "The Role of the Legislature in West Virginia's Failed Energy Policies").

61. *Id.*

misleading labeling in its 2009 "alternative and renewable energy portfolio standard," which, he claims, "did nothing" to actually stimulate the development of renewables (instead sanctioning forms of fossil fuels as "alternative" energy).[62] In addition, the chapter explores the "stranglehold" the coal industry has on the legislature that has resulted in an array of statutory actions to help the industry cut costs and salvage its bottom line in more difficult economic times.[63]

- *Bailing Out the Coal Industry on the Backs of West Virginia's Electric Ratepayers* (Chapter 10):[64] Here, Van Nostrand chronicles, in great detail, the history (commencing about 10 years ago) of transactions in which the state's electric utilities sought to transfer coal-fired plants dating from the early 1970s from their *unregulated* merchant power subsidiaries to their *regulated* load-serving entities. The author underscores the inflated prices the utilities proposed, the lack of rigorous analysis of lesser-cost alternatives, and the limited constraints the WVPSC put on the deals in green-lighting them.
- *Coal Operators Get Rich and West Virginia Gets to Clean Up the Mess* (Chapter 11):[65] This chapter deepens a theme of mismanagement by the coal companies themselves, compounded by inept state and federal regulation. In tandem, these factors led to massively underfunded mine site reclamation and other obligations. Van Nostrand explains how a wave of company consolidations in 2009-10 (when coal prices were rising) resulted in overleveraged corporate structures that inevitably went bust when coal prices fell back to earth (as the China boom cooled and cheaper natural gas generation in the U.S. pushed down coal's position in the dispatch stack). The ultimate consequence was a bevy of bankruptcies by companies large and small ("since 2012, more than sixty mine operators have filed for bankruptcy").[66] The chapter goes on to decry how the companies in bankruptcy shed much of their employee pension and benefits obligations as well as their land reclamation and environmental cleanup responsibilities, but executives were able to "walk off with substantial 'retention bonuses.'"[67] The federal law that was *supposed* to require backstop funding of site reclamation obligations through mining company bonding requirements failed because of unsound policies of the West Virginia environmental agency, which was charged with administration of the law, and lax

62. *The Coal Trap*, *supra* note 1, at 195.

63. *Id.*

64. *Id.* at 226 *et seq.* (Chapter 10: "Bailing Out the Coal Industry on the Backs of West Virginia's Electric Ratepayers").

65. *Id.* at 246 (Chapter 11: "Coal Operators Get Rich and West Virginia Gets to Clean Up the Mess").

66. *The Coal Trap*, *supra* note 1, at 246.

67. *Id.* Later in the chapter, Van Nostrand records that the four largest national coal producers managed to avoid almost $2 billion in environmental liabilities and $3.2 billion in retiree benefits through bankruptcy. *Id.* at 252.

oversight at the federal level. The upshot, the book concludes, will be either "billions of dollars" coming from state taxpayers to remediate the environmental damage or "allowing the blight on communities to continue [unabated]."[68]

- *What the Future Could Hold if Leaders Choose to Lead* (Chapter 12):[69] This final chapter is a resumé of the many faults Van Nostrand has already ascribed to the policy leaders and coal industry operators of the Mountain State; the onerous burdens their legacy has imposed on West Virginia; and what "real leadership" might look like – stressing the need for a transition from coal-fired power to "clean energy" alternatives. The author draws lessons from neighboring regions that have, in his view, risen to the challenge of diversifying and reinvigorating the resource-based Appalachian economy.

To understand the sheer breadth of what *The Coal Trap* tackles, it is best conceived of as a wide-angle view of virtually all the policy, legal, and commercial issues impacting the nation's utility business telescoped down to the specific experiences of West Virginia. In this way, the book is valuable as both a broad-based discussion of a considerable spectrum of topical legislative and regulatory issues nationally *and* as a case-study of what has transpired in a state with a long history of mining one fossil fuel (coal) and a more recent history of finding itself in the middle of the Marcellus shale gas belt. At the same time, readers should expect an account viewed through the lens of an advocate – not an impartial, balanced energy historian-analyst. Like any good advocate, Van Nostrand blends fact and opinion into a relatively seamless whole; and while the resulting blend is well worth taking on board – both for its comprehensiveness and specificity – an informed reader will have to parse the key contentions and compare them with other information sources. In short, although the author comes from a utility regulatory background and shows an impressive grasp of the facts, issues, and debates, he views the entirety through a green-tinted prism. Whether readers will find themselves consistently nodding their head, or scratching it, depends on their own points of view.

It is also worth underscoring that *The Coal Trap* deals with a world that is constantly changing. For example, natural gas markets have tightened, and prices have firmed, as Europe has turned away from Russian pipeline supplies in the wake of that country's Ukraine invasion. As a result, coal has crept back into the energy supply picture – in both in the U.S. and Europe – more than Van Nostrand would seem to prefer. Further, the natural gas industry may be capable of clamping down on its methane emissions, helping to redeem itself as the "bridge fuel" the author scorns because of the serious greenhouse gas impacts of escaping methane. And part of the European experience in 2021-22 – looking into the chasm of an energy price and shortage crisis (exacerbated by Germany prematurely retiring most of its nuclear energy fleet) – has been to second-guess its quick-cut to heavier reliance on renewable electric energy (primarily wind and solar). Van

68. *Id.* at 266.

69. *Id.* at 267 *et seq.* (Chapter 12: "What the Future Could Hold if Leaders Choose to Lead").

Nostrand, in Chapter 4 (which focuses on the "decarbonization" and distributed generation movements), chastises public utilities for at least rhetorically embracing "zero net carbon" goals, but only by around 2050 – a timeframe he finds much too "sluggish."[70] That is an understandable viewpoint for someone who regards climate change as an imminent crisis, but "how fast" is prudent becomes an issue of legitimate debate when the desire to go all in for "clean energy" is balanced against a utility's reliability obligations.

70. *The Coal Trap*, *supra* note 1, at 80.