



WESTERN RESOURCE
ADVOCATES



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Utah Supreme Court Rejects Permit for Coal-burning Plant

Justices: State's review of Sevier plant's pollution permit "woefully inadequate"

SALT LAKE CITY – After an eight-year battle to protect their pristine mountain valley from the pollution and impacts of a proposed coal-burning power plant, the Utah Supreme Court today validated the efforts of Sevier County residents, a retired firefighter in particular, by overturning the state permit for the plant.

In unanimous decisions on two cases brought separately, the Supreme Court today ordered the pollution permit for Sevier Power Co.'s planned 270-megawatt power plant to be sent back to the Utah Division of Air Quality and redone.

In rejecting the permit, the justices determined that:

- The Utah Division of Air Quality Board failed to require the agency to provide ample evidence as to why the permit should not have been revoked;
- State officials failed to adequately consider limits under the Clean Air Act for emissions of nitrogen oxide, a chemical component in smog formation;
- The state failed to consider alternative gasifying technologies to burning coal conventionally as the best way to control emissions, in particular carbon dioxide.

One of the cases was brought before the Supreme Court in 2008 by retirees and Sevier County residents Jim Kennon and Dick Cumiskey, neither of whom are attorneys. The other was filed by the Utah Chapter of the Sierra Club. Both plaintiffs alleged that Sevier Power Co. and the Utah Division of Air Quality failed to comply with state and federal air pollution regulations and as a result, the permit should be remanded.

“We said all along that SPC and the Division of Air Quality were trying to shortchange air quality protections and the health of our citizens,” said Jim Kennon. “That’s why we fought this so hard.”

As evidence of the severe deficiencies in the state's review of the pollution permit for the plant, Kennon provided the court with a copy of a Post-it Note that was part of the minimal documentation in the Division of Air Quality review of the permit application. The Supreme Court cited that fact in its decision:

“A record limited to a Post-it note indicating that someone was contacted regarding a review is woefully inadequate to convince a reasonable person that a review took place, let alone that the review was sufficiently rigorous ...”

“What this decision says is that the Clean Air Act matters,” said Joro Walker with Western Resource Advocates, a Boulder, Colo.-based conservation group, who represented the Utah Sierra Club in its case. “The requirements of the law are there for a reason, to protect public health, and the court said you can't shortchange the law with a miscellaneous Post-it Note.”

Even if Sevier Power gets a new permit, the company will still need a land-use permit from the county. And in 2008, Sevier County voters approved a ballot measure that requires majority voter approval for the land-use permit before the plant can be constructed.

“Nobody around here wants this plant to be built. It will poison our air, threaten our water supplies and destroy our quality of life,” said Kennon, a retired firefighter. “Burning coal is not something that fits in a beautiful place like Sevier County, so if developers try to go forward from here, they still have to contend with the ultimate court, that of the people.”

Clair Jones, conservation coordinator for the Sierra Club in Utah, said that the failure of Sevier Power to get a green light after eight long years is another telltale sign that the public, both locally and nationally, is demanding a transition to cleaner energy sources.

“The decision by the Supreme Court is the latest in a series of decisions by utilities, regulators and courts nationwide questioning the viability, impacts and wisdom of burning coal,” said Jones. “Five years ago, there were more than 150 proposals to build new coal-burning power plants nationwide, but the vast majority of those have either been rejected or abandoned as the country moves instead towards cleaner energy.”

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The story over the fight to stop the Sevier coal plant was documented in a short video released earlier this year. The video is available online at:

<http://www.youtube.com/watch?v=PZUx6stYJ9U>.