

**To:** Jackson, Ryan[jackson.ryan@epa.gov]  
**From:** POLITICO Pro Energy  
**Sent:** Thur 8/3/2017 9:44:15 AM  
**Subject:** Morning Energy: FERC quorum a-coming? — Pruitt reverses course on ozone delay — No place like Gold King in August

By Annie Snider | 08/03/2017 05:41 AM EDT

*With help from Eric Wolff, Alex Guillén, Darius Dixon and Esther Whieldon.*

**FERC QUORUM SO CLOSE YOU CAN ALMOST TASTE IT:** Late Wednesday, the White House officially sent the nominations for FERC nominees Rich Glick and Kevin McIntyre to the Senate, raising the prospect that the agency's six-month stretch without a quorum will finally get resolved, Darius Dixon [reports](#).

FERC has been unable to make major decisions on everything from interstate natural gas pipelines to liquefied natural gas export terminals to anti-market manipulation cases since early February. With the paperwork delivered, particularly for Democratic nominee Glick, the industry's Eye of Sauron-like attention is trained entirely on the Senate. GOP nominees Neil Chatterjee and Rob Powelson received approval from the Senate Energy and Natural Resources Committee in June, but their confirmations were stalled by Democrats amid battles over Obamacare and the tradition of molding bipartisan nomination packages for the agency. The calculation happening now is determining whether Glick's nomination — rather than his actual confirmation — is enough for Democrats to accept Chatterjee and Powelson being confirmed before the Senate skips town for recess. "They're trying to structure a package that gets both sides interested enough to get everybody behind it," [Sen. John Thune](#), the GOP No. 3, told ME. "I know that the FERC absences are on everybody's radar screen." Other senators said they expect a plan for FERC action to materials today.

**Nominations across the federal government have been piling up** for potential 11<sup>th</sup>-hour action ahead of the Senate's plans to depart for its abbreviated August break, no later than next week. The White House also officially delivered nominations Wednesday for John Henderson to lead the Air Force's energy, environment and installations program and Ryan Nelson to be Interior Department Solicitor.

**In the meantime**, Senate Majority Leader [Mitch McConnell](#) teed up a noon vote today on Dan Brouillette's nomination to be Deputy Secretary of Energy.

**Optimistic Yucca foe:** Nevada Sen. [Dean Heller](#), who held up the nomination to [protest](#) Brouillette's support for a nuclear waste repository in his home state, lifted that hold after making progress on Yucca Mountain, his office told ME, declining to elaborate.

**PRUITT REVERSES COURSE ON OZONE IMPLEMENTATION DELAY:** EPA Administrator Scott Pruitt has dropped his plan to delay a key step in implementing the 2015 ozone standard — deciding which areas hit the air quality target. Pruitt had originally said he didn't think EPA had the necessary data to decide on the designations by the Oct. 1 deadline, a move that drew lawsuits from environmental groups and blue states. But a [pre-publication](#)

Federal Register notice Pruitt signed Wednesday says that "the information gaps that formed the basis of the extension may not be as expansive as we previously believed."

**The notice hints, however, that there may yet be regional delays** made on a case-by-case basis. "The Administrator may still determine that an extension of time to complete designations is necessary, but is not making such a determination at this time," it states. Here's Alex Guillén with more.

**YOU MADE IT TO THURSDAY!** I'm your fill-in host, Annie Snider, and I know it's not surprising, but I am still impressed with y'all's knowledge of nuclear history. Dan Meyer of the Duberstein group was the first across the finish line with yesterday's trivia, correctly answering that the August 2, 1939 letter written by Leo Szilard and signed by Albert Einstein warned President Franklin D. Roosevelt that Germany could develop an atomic bomb and urged the U.S. to begin its own nuclear program — which eventually became the Manhattan project. Dan has today's question: Name the official currently in the line of presidential succession who is ineligible to be president. Send your guesses — and your tips, energy gossip and comments to [asnider@politico.com](mailto:asnider@politico.com) or follow us on Twitter [@AnnElizabeth18](https://twitter.com/AnnElizabeth18), [@AnthonyAdragna](https://twitter.com/AnthonyAdragna), [@Morning\\_Energy](https://twitter.com/Morning_Energy) and [@POLITICOPro](https://twitter.com/POLITICOPro).

**THE GLASS IS NOW 40 PERCENT FULL:** EPA put out an annual report Wednesday touting decreased emissions amid a growing economy over the last quarter-century — old news to those following the issue. But as Mother Jones reporter Rebecca Leber pointed out Wednesday on Twitter, the 40 percent non-attainment rate for ozone EPA Administrator Scott Pruitt has used in the past to attack the Obama administration's environmental record is now an EPA win. "Despite this success, there is more work to be done," Pruitt said in a statement. He vowed to work with states to improve air quality. Environmentalists also noted a changed tune. EPA's report credits the pollution reductions to "implementation of the Clean Air Act and technological advancements." As the NRDC's John Walke pointed out, many innovations came about because of demand created by regulations. "It's not like electric utility sector was clamoring for scrubbers prior to any Clean Air Act rules warranted using them," he wrote.

**ANNIVERSARY GETAWAY:** Pruitt is scheduled to tour the Gold King Mine with Colorado Gov. John Hickenlooper (D) and Sen. Cory Gardner (R-Colo.) on Friday, just ahead of the 2-year anniversary of the 2015 spill of 3 million gallons of wastewater by an EPA crew, the Denver Post reports. The disaster has become a favorite example for congressional Republicans of EPA ineptitude.

Gina McCarthy, who was EPA administrator at the time of the spill, visited command centers and people affected by the toxic wastewater that eventually reached the Colorado River, but did not visit the actual mine. EPA said at the time that the area was too remote and difficult to access, and that they did not want to interfere with emergency operations underway.

**Road-trippin':** Already on the road, Pruitt swung through Indiana Wednesday, where he spoke Wednesday with Gov. Eric Holcomb (R) and farm interests about the Waters of the U.S. rule, which EPA is in the midst of withdrawing and rewriting, and also visited Liberty Mine. Next week he'll be back on the topic of the water rule while in North Dakota, the Bismarck Tribune

reports.

### **INTERIOR NO. 2 CALLS OUT EMPLOYEES WHO "PARROT" SPECIAL**

**INTERESTS:** After being sworn in as Deputy Interior Secretary on Tuesday, David Bernhardt sent a missive to department employees calling out "a few people" who he said "parrot comments of special interests rather than carry out their governmental duties." Bernhardt, who was opposed by most Senate Democrats, in part over potential conflict of interests concerns related to his former job as a lobbyist and lawyer for various industries, warned employees in the email obtained by POLITICO that such people "often avoid grounding their views in the actual facts or the law." Esther Whieldon's got the rundown here.

**FALSE ALARM?** Some climate change information disappeared from the Department of Agriculture's website late last week before reappearing late yesterday, according to a report from the Environmental Data & Governance Initiative. The missing pages from USDA's "Climate Hubs," which provide tools to help farmers and land managers adapt to climate change, "were the result of the site being migrated to a new server," an agency spokeswoman said.

Agriculture Secretary Sony Perdue and the nominee to be his chief scientist, Sam Clovis, have both questioned human-caused climate change. But Perdue has said he's committed to "digging ever deeper" into research about agricultural production in a changing climate.

**NOTHIN' TO SEE HERE:** Southern Co. CEO Tom Fanning spent Wednesday morning trying to squash speculation that the Vogtle nuclear project is facing a similar fate to the two-reactor project slated for shutdown in South Carolina. On a call with analysts, Fanning argued "there are a host of differences" between the two projects, with project backers on track to decide by the end of this month how to proceed. Here's Darius Dixon with more.

### **SPECIAL COUNSEL INVESTIGATING OBAMA-ERA WHISTLEBLOWER FIRING:**

The U.S. Office of Special Counsel has launched a whistleblower investigation into the Obama administration's firing of an Interior Department employee who raised concerns over the agency's plan to approve Shell's Arctic offshore drilling lease, Esther Whieldon reports. The U.S. Merit Systems Protection Board this week granted the counsel's request to require the agency to reinstate Jeffrey Missal as the regional environmental officer with the agency's Bureau of Safety and Environmental Enforcement in Anchorage, Alaska while the office of special counsel investigates.

**A MONIZ FOR THE AGES:** Former Energy Secretary Ernest Moniz returned to old stomping grounds at the Energy Department Wednesday as a guest of honor for the unveiling of his official portrait to an auditorium of current and former agency employees. NNSA Administrator Frank Klotz presided, and Moniz's successor, Rick Perry, gave speech. Both Moniz and Perry got plenty of laughs out of the attendees, which included ex-Energy Secretary Bill Richardson, former DOE deputies Elizabeth Sherwood-Randall and Dan Poneman, and Obama Health and Human Services chief Sylvia Burwell, who is now president of American University.

**Moniz quipped that he was honored** so many people gathered for his "official designation as a historical artifact" before engaging in an extended explanation of everything in Chris Saper's

painting, which included "The Future of Natural Gas" report he led while at MIT, a DOE Quadrennial Technology Review, the Obama administration's Quadrennial Energy Review — an effort he pushed for well before he was secretary — and the Iran nuclear agreement he helped negotiate. DOE's Flickr account has [dozens of photos](#).

**GREENS, DEM STATES URGE COURT AGAINST HEARING METHANE APPEAL:**

The coalition of Democratic states and environmental groups that challenged EPA Administrator Scott Pruitt's 90-day stay of the methane rule for new oil and gas wells yesterday [urged](#) the D.C. Circuit Court of Appeals not to hear an appeal. The full court on Monday reinstated the rule while it considers requests from industry groups and Republican states for an appeal heard by all 11 judges. The stay's opponents argued yesterday that the case "does not come close to satisfying the demanding standards for granting *en banc* rehearing." EPA has remained silent on the matter so far, but may weigh in by this afternoon's final brief deadline, along with the stay's industry and state supporters. The court could decide whether to hear the appeal as soon as Friday.

**EPA PANEL ON PRUITT CO2 REMARK: OPINIONS DON'T VIOLATE INTEGRITY**

**POLICY:** After a [letter](#) circulated in conservative news outlets Tuesday clearing Pruitt from scientific integrity allegations for his controversial remark that carbon dioxide is not the primary driver of climate change, the agency released a [four-page report](#) Wednesday compiled by five senior career staffers. The panel found Pruitt's comment did not violate the agency's scientific integrity policy because it was not a "significant departure from accepted practices of the relevant scientific or scholarly community." However, the report did not discuss how the remark diverged from scientists' consensus, and concluded "expressing an opinion" does not violate the integrity policy.

**ZINKE TAKES ANOTHER MONUMENT OFF CHOPPING BLOCK:** Interior Secretary Ryan Zinke on Tuesday announced he will recommend Trump leave intact the Upper Missouri River Breaks National Monument in central Montana. "The monument is one of the only free-flowing areas of the Missouri that remains as Lewis and Clark saw it more than 200 years ago," Zinke said in a statement. Zinke has until Aug. 24 to send his recommendations on the remaining monuments on his list.

**BIODIESEL'S DC TEAM MOTORS AWAY:** The National Biodiesel Board, which is based in Missouri, is losing two of its three Washington staffers. Anne Steckel, the head of the D.C. office, and Sandra Franco, the head of regulatory affairs and general counsel, are both leaving the group, NBB spokesperson Rosemarie Calabro Tully told ME. Chief Operating Officer Doug Whitehead will come to D.C. to run the office. The move comes at an awkward time, as lobbying is ramping up to get a biodiesel producers tax credit into any future tax overhaul bill, the group's members want EPA to increase the biodiesel requirements in the Renewable Fuel Standard, and they're looking to the Commerce Department to slap sanctions on Argentina and Indonesia.

**MAINE LEGISLATURE SUSTAINS VETO ON SOLAR BILL:** The Maine Legislature on Wednesday did not override Gov. Paul LePage's veto of [L.D. 1504](#), a measure that would have had utility regulators formulate new recommendations on the future of net metering in 2019. The Legislature passed the measure in June with a veto-proof majority but on Tuesday the House fell short of the votes needed to override the veto.

**REPORT SAYS STATES ILL-EQUIPPED TO TAKE ON ESA:** A [report](#) out Tuesday by University of California Irvine School of Law suggests that most states are legally and financially ill-equipped to take over protecting and recovering threatened and endangered species. It notes that state expenditures on conservation of federally listed species make up only about 5 percent of total national spending on ESA, and found that compared with the requirements of the Endangered Species Act, some state laws fall short.

**MOVER, SHAKER:** Monica Trauzzi, managing editor and anchor of E&E News' video operation, is heading to the Nuclear Energy Institute in September as senior director of external communications.

Joan Card, a Western water expert who served as senior policy advisor in EPA's Region 8 office until January, has joined the natural resources consulting firm Culp & Kelly, LLP.

## QUICK HITS

- Pacific Northwest threatened by hottest weather ever recorded. [Washington Post](#).
- Tesla's quarterly loss widens as it rolls out the mass-market Model 3. [New York Times](#).
- Kentucky coal employment, production declined in last three months. [Lexington Herald Leader](#).
- China's nuclear export ambitions run into friction. [Financial Times](#).
- OPEC's catch-22: How to unwind its deal to cut oil output. [Wall Street Journal](#).

## HAPPENING TODAY

10 a.m. — The Senate Energy and Natural Resources Committee holds a [hearing](#) on federal and nonfederal collaboration to reduce wildfire risk, Dirksen 366.

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<https://www.politicopro.com/tipsheets/morning-energy/2017/08/ferc-quorum-a-coming-024051>

## Stories from POLITICO Pro

**White House delivers long-awaited FERC nominations to Senate** [Back](#)

By Darius Dixon | 08/02/2017 06:44 PM EDT

The White House announced tonight that it has officially sent the Senate paperwork for FERC nominees Rich Glick and Kevin McIntyre, President Donald Trump's pick for the agency

chairman.

FERC has been without a leadership quorum since early February, leaving it unable to decide on major interstate natural gas pipelines, liquefied natural gas export terminals, anti-market manipulation cases or contested electric rate plans.

Trump's plans to nominate Glick and McIntyre were announced [June 28](#) and [July 13](#), respectively.

Glick has been nominated to fill a Democratic seat on the commission, and the arrival of his paperwork increases the chance that Senate Democrats get behind smooth confirmation votes for two other pending FERC nominees.

GOP picks Neil Chatterjee and Rob Powelson were approved by the Senate Energy and Natural Resources Committee in June, but they have been stalled since as Democrats used procedural tactics to slow-walk confirmations for most Trump nominees amid GOP efforts to repeal Obamacare. Now, lawmakers have been negotiating a slate of uncontroversial nominees to confirm before recess.

**WHAT'S NEXT:** With Glick and McIntyre's nomination paperwork in the Senate, it's possible Chatterjee and Powelson get approved on the Senate floor with a voice vote or by unanimous consent, however the timing is unclear and negotiations over nominees is still delicate.

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**Pruitt drops delay of ozone rule implementation** [Back](#)

By Alex Guillén | 08/02/2017 07:55 PM EDT

EPA Administrator Scott Pruitt has dropped his one-year delay of an upcoming implementation step for the 2015 ozone standard, EPA announced today.

The withdrawal comes after lawsuits from [environmental groups](#) and [Democratic states](#) sued over the delay in deciding which areas meet the standard and which do not. EPA had been due to file its first defense of Pruitt's delay in court on Thursday.

Pruitt originally said he did not believe EPA had the necessary data to decide on the designations by the Oct. 1 deadline. But a [pre-publication Federal Register notice](#) signed by Pruitt on Wednesday says that "the information gaps that formed the basis of the extension may not be as expansive as we previously believed."

Some areas may be ready for designation in the coming months, and the notice hints that regional delays may be necessary on a case-by-case basis. "The Administrator may still

determine that an extension of time to complete designations is necessary, but is not making such a determination at this time," says the notice in withdrawing the nationwide delay.

"We believe in dialogue with, and being responsive to, our state partners. Today's action reinforces our commitment to working with the states through the complex designation process," Pruitt said in a statement.

Pruitt also said he intends to avoid any settlement agreements with "activist groups," a practice he has long opposed and said he ended at EPA. "We do not believe in regulation through litigation, and we take deadlines seriously. We also take the statute and the authority it gives us seriously," Pruitt said.

**WHAT'S NEXT:** EPA has until Oct. 1 to determine which areas of the U.S. meet the standard and which will have to submit plans to lower pollution, a years-long process.

*To view online [click here](#).*

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**Interior No. 2 tells employees to follow the law, not 'parrot' special interests** [Back](#)

By Esther Whieldon | 08/02/2017 03:44 PM EDT

Interior Deputy Secretary David Bernhardt, a former lobbyist, believes a few bad apples within the department have "forgotten their oath" and "choose to parrot comments of special interests rather than carry out their governmental duties to move the country forward," he told employees in an introductory [email](#) sent after he was sworn in Tuesday.

"By doing so, they often avoid grounding their views in the actual facts or the law. Such conduct is arbitrary. It is lazy. We must always refrain from taking such a path," Bernhardt wrote in the email, a copy of which was obtained by POLITICO today.

Before being confirmed as Interior Secretary Ryan Zinke's second-in-command, Bernhardt spent years as a lobbyist for clients including Westlands Water District. Bernhardt pledged during his confirmation process to recuse himself from matters involving past clients for two years.

In the email, Bernhardt promised to respect employees at the Interior Department, where he served a previous stint under President George W. Bush. But he stressed that they were bound by laws set by Congress and obligated to exercise discretion in implementing those laws to accord with the administration's views.

The agency's authority has limits, he wrote, and instead of trying to "stretch the law like a fraying rubber band to fit a particular policy vision," the agency should ask Congress for help.

Bernhardt [told](#) the Senate Energy and Natural Resource Committee in May that the president's

views, not the recommendations of climate scientists, would guide the department's policies where possible.

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## **Southern CEO: Comparing Vogtle to Summer is 'apples and oranges'** [Back](#)

By Darius Dixon | 08/02/2017 04:38 PM EDT

Southern Co. chief Tom Fanning sought to tamp down speculation today that the Vogtle nuclear project was in similarly dire straits as a two-reactor project facing shutdown in South Carolina, while also praising several Trump administration officials.

On Monday, SCANA and co-owner Santee Cooper announced plans to walk away from their V.C. Summer nuclear project in South Carolina.

But Fanning said "there are a host of differences" between the two project and the Vogtle backers were on track to decide by the end of this month how to proceed.

"It really is apples and oranges," he added, pointing to different regulatory processes, commercial terms and the cost of capital needed.

Southern and its partners, Oglethorpe Power Co., Municipal Electric Authority of Georgia and the City of Dalton have been analyzing their options for finishing all or part of the project.

The Energy Department authorized \$8.3 billion in loan guarantees to the project under the Obama administration, but Fanning said the new administration has been "fantastic" in dealing with Toshiba after its Westinghouse unit, the reactor designer and Vogtle contractor, filed for bankruptcy this spring.

Fanning praised several members of the Trump administration — Energy Secretary Rick Perry, Commerce Secretary Wilbur Ross and Vice President Mike Pence, in particular — for helping secure commitments from Toshiba. Since Westinghouse's bankruptcy, Vogtle's owners have been trying to finalize payments from Toshiba, access to intellectual property and the scope of Westinghouse's responsibilities to the project.

**WHAT'S NEXT:** The Vogtle project owners expect to file their recommendation on the future of the reactors with state regulators later this month.

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## Special counsel investigating Interior employee whistleblower case [Back](#)

By Esther Whieldon | 08/02/2017 07:26 PM EDT

The U.S. Office of Special Counsel today revealed it has launched a whistle-blower investigation over the Obama administration's firing of an Interior Department employee who raised concerns about plans to approve Shell's offshore drilling lease in the Arctic.

The U.S. Merit Systems Protection Board [granted](#) the counsel's request to make Interior reinstate Jeffrey Missal as the regional environmental officer with the agency's Bureau of Safety and Environmental Enforcement in Anchorage, Alaska, for 45 days while the office of special counsel negotiates with the agency over what "corrective action" the agency should take.

Missal claimed his January 2016 firing came in retaliation for raising concerns with Interior's inspector general about two years prior that the agency was planning on affirming a lease sale in the Chukchi Sea regardless of the findings of the environmental impact statement for the lease.

The report does not list the company who had the lease. But according to documents on the Bureau of Ocean Energy Management's [website](#), Shell Gulf of Mexico Inc. had won the bid for the lease in the Chukchi Sea, and BSEE affirmed the lease in April 2015.

The agency fired Missal accusing him of conducting outside business during work hours, among other things.

**WHAT'S NEXT:** Missal will be able to return to his job at Interior at least until Sept. 15 while the counsel's office continues to negotiate with the department.

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## Scientific integrity panel clears Pruitt over CO2 comments [Back](#)

By Alex Guillén | 08/01/2017 06:44 PM EDT

A panel of EPA employees says Administrator Scott Pruitt's controversial March comments on television that carbon dioxide is not the primary driver of climate change did not violate the agency's scientific integrity policy.

"Expressing an opinion about science is not a violation of the EPA Scientific Integrity Policy," the panel wrote.

The panel's two-paragraph finding was included in a [letter](#) from Thomas Sinks, director of EPA's Office of the Science Advisor, addressed to the Sierra Club, which formally complained about

Pruitt's comment but said it had not received a copy of the response.

EPA earlier today sent out a press release touting an article on the letter in the conservative [Washington Free Beacon](#).

The agency's scientific integrity policy "specifically encourages employees to express their opinion should the employee disagree with scientific data, scientific interpretations, or scientific conclusions," the panel wrote, noting that Pruitt "did not suppress or alter Agency scientific findings."

The special panel was formed by EPA's [Scientific Integrity Committee](#), which is made up of high-ranking EPA officials. It did not comment on the accuracy of his statement, which departs from the scientific consensus that carbon dioxide is the primary driver of global warming.

Elena Saxonhouse, a senior attorney with Sierra Club, said in a statement that the group had "been told by EPA staff that the proper process is for the party that filed the complaint to be informed first, not the media." She added: "Pruitt's 'opinions' can have especially weighty consequences for the many scientists working below him, yet the letter treats him like any other employee."

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