

To: Jackson, Ryan[jackson.ryan@epa.gov]
From: POLITICO Pro Energy
Sent: Tue 8/15/2017 9:44:26 AM
Subject: Morning Energy: High-stake solar trade fight gets public spotlight — Trump to sign environmental permitting EO today — Court tells PHMSA to revisit Exxon fine

By Anthony Adragna | 08/15/2017 05:42 AM EDT

With help from Darius Dixon and Annie Snider

SOLAR FLARE UPS? Witnesses step before the International Trade Commission this morning for a [public hearing](#) to offer their perspectives on whether President Donald Trump should slap tariffs on solar imports in a case with massive implications for the thriving U.S. industry. Two troubled solar manufacturers — Suniva Inc. and SolarWorld Americas — want the commission to declare imports of cheap foreign parts from Asia have caused "serious injury" to their domestic business. The companies want the U.S. to impose duties on imported equipment in order to revive domestic manufacturing facilities — moves they [claim](#) would create thousands of jobs across the industry. "Despite herculean efforts to compete against this onslaught, the imports, which are directly competitive with domestic product, have ground the domestic industry down to a mere shell of its former self," Suniva argued in its [pre-hearing brief](#). And Matt Card, an executive vice president for commercial operations with the company, plans to say the U.S. will "have no control of its own destiny when it comes to power generation from the sun" without tariffs put in place.

Opponents of the petitions argue the two companies' woes stem from bad business calls and that increasing the price of imports would be bad for the industry as a whole, a move that risks destroying jobs at companies that install solar panels on rooftops or develop utility-scale projects, for example. "This is not a case in which the facts support the findings necessary to justify imposition of any relief," the Solar Energy Industry Association and SunPower Corp. wrote in their [own brief](#). Other opponents of the petitions include utilities, union officials, bipartisan groups of [senators](#) and [House members](#), venture capital groups and conservative organizations like ALEC and the Heritage Foundation, among others. State elected officials from Minnesota, North Carolina, Georgia, Maryland and Virginia, as well as trade officials from South Carolina, Indonesia, the European Union, Brazil Mexico, Canada and Taiwan are all expected to testify as well.

If you go: The public hearing kicks off today at 9:30 a.m. at the ITC's main hearing room at 500 E Street SW. A full list of scheduled witnesses is available [here](#).

What happens afterward? If the four-member commission ties or votes in favor of the petition, it will hold another public hearing on what to do about the injury to U.S. companies. The final call about what to do would then be left to Trump where it's not clear how the ever-unpredictable White House might handle the matter given the administration's highly-publicized efforts to protect U.S. manufacturing jobs. A vote against the petition by the ITC would kill the effort.

WELCOME TO TUESDAY! I'm your host Anthony Adragna, and DOE's Diane Meck was first up to identify "The Mousetrap" as the play with the longest initial run. (It's awesome, too,

says this Agatha Christie fan.) For today: What entire country did rapper Snoop Dogg try to rent out in 2010 to film a music video? Send your tips, energy gossip and comments to aadragna@politico.com, or follow us on Twitter [@AnthonyAdragna](https://twitter.com/AnthonyAdragna), [@Morning_Energy](https://twitter.com/Morning_Energy) and [@POLITICOPro](https://twitter.com/POLITICOPro).

ANOTHER EXECUTIVE ORDER COMING: Trump will sign an executive order today at 3 p.m. at Trump Tower "establishing discipline and accountability in the environmental review and permitting process for infrastructure projects," according to the White House, which did not respond to a request for further details. The president has repeatedly bemoaned what he describes as lengthy delays to new projects due to various federal regulatory requirements and signed [an executive order](#) expediting environmental reviews back in January. That one directed the Council on Environmental Quality chairman to identify high priority infrastructure projects and work with other agencies to expedite their approvals. Back in June, Trump announced a new office within CEQ that he said would "root out inefficiency, clarify lines of authority and streamline federal and state [and] local procedures so that communities can modernize their aging infrastructure without fear of outdated federal rules getting in their way." Despite those earlier announcements, Trump has still not yet nominated anyone to lead CEQ.

COURT SAYS PHMSA WAS TOO TOUGH ON EXXON: The Obama administration over-penalized Exxon Mobil for its 2013 pipeline spill in Mayflower, Ark., a federal court ruled Monday. The U.S. Court of Appeals for the Fifth Circuit [threw out](#) a number of safety violations against Exxon, saying the company met its legal obligations to consider all risk factors associated with the Pegasus Pipeline. The Pipeline and Hazardous Materials Safety Administration's interpretation of its pipeline integrity regulations would leave entities unable to escape legal liability whenever a pipeline spill occurred, the court ruled. "The unfortunate fact of the matter is that, despite adherence to safety guidelines and regulations, oil spills still do occur," Judge Jennifer Walker Elrod, a George W. Bush appointee, wrote for the court. The decision gives the Trump administration (which lacks a permanent PHMSA chief or nominee to fill that slot) an opportunity to lower the \$2.6 million fine levied against Exxon.

EYES AND EARS ON GEORGIA: So long as the Vogtle nuclear project remains on the financial and political rocks, regulators on the Georgia Public Service Commission are going to be getting a lot of attention. Commissioners are scheduled to meet this morning for what was probably going to be a routine "[administrative session](#)" where they may take up a motion related to the troubled two-reactor project. Last week, Georgia PSC Chairman Stan Wise introduced a 14-point [motion](#) he's hoping will be seen as something of a "test vote" on whether the agency is even open to continuing the project — a fairly low, but important, bar at the moment since Southern Co. hasn't given its latest cost estimates for completing (or partially completing) the project. Southern is expected to deliver a recommendation on the future of Vogtle later this month. The PSC meeting starts at 10 a.m. in Atlanta.

ZINKE HIT ON THE HOMEFRONT: The Western Values Project is out this morning with a \$500,000 [ad buy](#) in Montana hitting Zinke for his ongoing review of several dozen national monuments and calling for him to protect public lands. It's part of a broader \$2 million effort from conservation and sportsman groups to hit the former Montana congressman as he prepares to issue his recommendations on the national monuments to Trump. "Secretary Zinke went to

Washington, D.C., and left his Montana values at the door," Chris Saeger, executive director of the Western Values Project, said in a statement.

Side note: Can anyone remember a Cabinet official facing an ad campaign in their home state for their ongoing administration-specific work?

LAST CALL! Just 10 days are left before Zinke's much-anticipated monument recommendations are due to Trump, but today is the last opportunity for the public to comment on a separate — but related — examination of the status of 11 marine national monuments and sanctuaries. The Commerce Department has until late October to issue its own report on everything from the potential for offshore drilling in those areas, to the costs of managing the monuments and sanctuaries and the extent to which state, tribes and other agencies were consulted before those designations were made.

COLORADO RIVER PROGNOSIS COMING TODAY: The Bureau of Reclamation is due this morning to release a key study that will determine whether a water shortage will be declared in the lower basin next year. A year ago, water levels at Lake Mead, the massive reservoir supplying Nevada, southern California and Arizona, looked more likely than not to dip low enough to trigger the first round of mandatory water delivery cuts in 2018. But a wet winter and major water conservation efforts appear to have spared the basin this time. Still, the eyes of the West will be on just how much wiggle room is left above that trigger point, and how likely Reclamation thinks it is that a shortage declaration could come in 2019.

U.S.-Mexico deal moving forward: Meanwhile, a water-sharing agreement between the U.S. and its southern neighbor is making progress, with a number of state water agencies and major users preparing to give their formal sign-off to the deal in the coming weeks. The agreement, an amendment to the treaty governing cross-border water sharing, would replace a deal set to expire at the end of 2017 governing how shortages are shared between the two countries.

SETTLEMENT OFFERED IN DAKOTA ACCESS CASE: Energy Transfer Partners, the company behind the Dakota Access pipeline, would pay \$15,000 to settle claims it failed to notify regulators about Native American cultural artifacts discovered the construction process under a settlement proposed Monday by the North Dakota Public Service Commission, the Bismarck Tribune reports. The company now has 10 days to consider the offer.

PENCE 'ABSOLUTELY DETERMINED' ON VENEZUELA: Vice President Mike Pence reiterated during a stop in Cartagena, Colombia, the U.S. was not seriously considering military action against Venezuela but said the "failed state" threatened regional stability. "We are absolutely determined to bring the full measure of American economic and diplomatic power to bear until we see democracy restored," he said, without further elaboration.

COMPLAINT FILED OVER DOE LEAK CRACKDOWN: The Project On Government Oversight has filed a complaint with the Office of Special Counsel over posters at DOE targeting leaks. The groups says those posters do not include legally required language to ensure that employees are aware of their legally protected right to report wrongdoing. "DOE's management communications are likely to erroneously create the impression that government employees and

contractors at DOE, and other agencies, have no legal avenue to blow the whistle on government waste, fraud, and abuse," Danielle Brian, the group's executive director, wrote. "This needs to be remedied, fast." Among the recommendations is a call for senior management at DOE to state whistleblowers disclosing non-classified material would be protected and the immediate removal of the posters in question.

FARMER'S WETLAND CASE HEADS TO PENALTY PHASE: John Duarte, the California nursery owner whose wetlands lawsuit has been held up by agricultural and property rights advocates as a prime example of government overreach, heads back to court this morning for the penalty phase of his case after being found guilty of violating the Clean Water Act by a federal judge in Sacramento. Duarte faces potentially millions of dollars in fines, but has asked the court to assess only a symbolic \$1 fee.

At issue is Duarte's use of a plowing method, which the Army Corps of Engineers argues was "deep ripping" that can be damaging to a rare, ecologically important type of wetland called vernal pools. While the Clean Water Act exempts normal farming practices, including plowing, from permitting requirements, it does not exempt deep ripping. A motion to dismiss the case is also pending, with Duarte's legal team arguing that the Army Corps didn't have the authority to bring the lawsuit — only the EPA, which has ultimate authority over Clean Water Act wetlands issues.

PREVIEW OF FALL ACTION: Rep. [John Shimkus](#), Energy and Commerce Environment Subcommittee chairman, told a [local Illinois newspaper](#) Monday nuclear waste and drinking water legislation that cleared the full committee could be part of a still-theoretical infrastructure package this fall. "They can be passed on their own, or they could be included in a bigger infrastructure package along with other transportation, energy and water infrastructure programs," he told the River Bender.

DISMISSED: A federal judge ruled Monday an EPA enforcement action against Putnam County Commissioner Ron Foster and two of his companies was not motivated because he made a political donation to Rep. [David McKinley](#), the Charleston Gazette-Mail [reports](#). "Plaintiffs have been unable to demonstrate any other retaliatory conduct by the EPA that is causally linked to the political research document or any other evidence related to political animus on the part of the EPA," U.S. District Judge John T. Copenhaver Jr. wrote in an 83-page opinion.

LIGHTER SIDE OF PRUITT: An Iowa television [interview](#) offered a glimpse at the softer side of EPA Administrator Scott Pruitt through a series of rapid-fire questions. The politician he admires most? Former Oklahoma Sen. Don Nickles. How he passes long hours traveling? "We always have a good time as far as good food and fellowship." How baseball can get even better? "I think we need to do more to export the product internationally." A bold prediction? The Chicago Cubs will win the World Series again within five years, noting the Ricketts family that owns the team "are good friends of mine."

THAT'S SOME 24K MAGIC: Singer Bruno Mars will donate \$1 million from a concert in Auburn Hills, Mich. to benefit those affected by the Flint water crisis, the Associated Press [reports](#). Mars and tour promoter Live Nation will give the money to the Community Foundation

of Greater Flint. "Ongoing challenges remain years later for Flint residents, and it's important that we don't forget our brothers and sisters affected by this disaster," the singer said in a statement.

QUICK HITS

- Oilfield sand miners encroaching on threatened West Texas lizard. [Texas Tribune](#).
- Billionaire hedge-fund manager Tepper adds contrarian energy stocks. [Reuters](#).
- Without Oil, North Korea Sanctions Won't Stop Kim. [Bloomberg](#).
- Federal government halts drilling at North Dakota well site. [AP](#).
- Security company denies providing illegal services during DAPL protests. [Bismarck Tribune](#).
- California Republicans face backlash for backing climate change program. [Los Angeles Times](#).

HAPPENING TODAY

9:30 a.m. — U.S. International Trade Commission holds [public hearing](#) on Suniva trade petition, 500 E Street SW

10:00 a.m. — "[Addressing the Water-Energy Nexus in an Integrated and Proactive Way](#)," United States Energy Association, 1300 Pennsylvania Ave NW, Suite 550

THAT'S ALL FOR ME!

To view online:

<https://www.politicopro.com/tipsheets/morning-energy/2017/08/high-stake-solar-trade-fight-gets-public-spotlight-024229>

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