

To: Dravis, Samantha[dravis.samantha@epa.gov]
From: POLITICO Pro Energy
Sent: Tue 5/16/2017 9:47:39 AM
Subject: Morning Energy: Advice for EPA on regulatory reform — Trump admin seeks indefinite pause on power plant litigation — More appointees face ethics questions

By Anthony Adragna | 05/16/2017 05:43 AM EDT

With help from Darius Dixon, Ben Lefebvre and Eric Wolff

HELPING TRUMP NAVIGATE THE REGULATORY WEEDS: Amid the daily drama out of President Donald Trump's administration, its deregulatory bonanza has been proceeding relatively smoothly. Business groups and Republicans have cheered Trump's orders for EPA to revisit the Obama administration's highest-profile rules, and now they are venturing deep into the weeds to draw up advice for what Trump and EPA Administrator Scott Pruitt should to go after next. EPA solicited comments through Monday on its effort to comply with Trump's Feb. 24 regulatory reform [executive order](#).

The [Edison Electric Institute](#), which represent investor-owned utilities, outlined a series of technical tweaks it would like to see to a handful of Clean Air Act rules, asked EPA to revise its coal ash disposal guidelines, and called for the withdrawal of several water regulations. But the group does not address in detail the Clean Power Plan or Waters of the U.S. rule, which were the subject of separate executive orders.

In addition to offering its own list of rules for elimination, the [U.S. Chamber of Commerce](#) said EPA should change how it writes rules. Whenever possible, EPA should estimate whether its rules create or destroy jobs, and it should change how it calculates both costs and benefits, the Chamber recommended. "Perhaps as important as identifying bad regulations that should be modified or repealed is identifying bad regulatory policy that is embedded in agency programs," the group wrote. Eight Senate EPW Republicans [asked](#) the agency to pay special attention to regulations that relied on the social cost of carbon or co-benefits as part of their cost-benefit analyses.

Greens deliver a different set of instructions: Environmental groups like the [Natural Resources Defense Council](#) and [Rocky Mountain institute](#) called on the EPA to strengthen, rather than withdraw or weaken rules like the Clean Power Plan, fuel efficiency standards, or mercury pollution rules for coal power plants. "I challenge President Trump or Administrator Pruitt to find a public investment with a better rate of return for the American people than the Clean Air Act," NRDC's David Doniger wrote.

EPA SEEKS INDEFINITE PAUSE ON CPP LEGAL FIGHT: The Trump [administration](#) and [opponents](#) of the Obama-era Clean Power Plan asked a federal appeals court to put litigation challenging the regulation on hold indefinitely Monday, Pro's Alex Guillén [reports](#). Both said remanding the rule to EPA would likely trigger a wave of new litigation, while not touching the issue of whether the power plant carbon regulation violated the Clean Air Act. They argue putting the case on ice indefinitely would allow the agency finish its review of the rule more quickly because it would not take the time and resources to address new legal issues.

Proponents seek ruling: Environmentalists, states that support the Clean Power Plan, clean energy groups and several utilities said their preference would be for the court to actually issue its ruling, noting there are several major legal questions the courts likely will need to answer at some point. Environmental groups strongly opposed keeping the Supreme Court stay of the regulation in place indefinitely, arguing it would "convert temporary enforcement relief pending judicial review into a long-term suspension of the Clean Power Plan, without any court having issued a decision on its legal merits and without following the administrative steps necessary to amend, suspend or withdraw a regulation."

Meanwhile, similar briefs were filed by EPA and its challengers in urging the court to keep an indefinite hold on litigation challenging another regulation placing carbon dioxide emissions on future power plants. Environmental groups, supportive states and pro-rule utilities said they would like to see this case continued through arguments and a decision by the court, but voiced no preference over remand versus abeyance if the litigation doesn't continue right away.

PSA: EPA launched a new website Monday for information on its reconsideration of the Obama administration's waters of the U.S. regulation. It replaces the website used during the 2015 rulemaking. "This website aims to provide the public with information about our actions to meet the president's directive," Pruitt said in a statement.

WELCOME TO TUESDAY! I'm your host Anthony Adragna, and Boyden Gray & Associates' Andrew Varcoe was first to identify Hawaii, Texas and Vermont as three states that were previously independent countries (though the National Propane Gas Association's Jeffrey Petrash correctly notes California was an unrecognized independent country for 26 days back in 1846). For today: Speaking of the Golden State, what was California's original capital? 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).

NEW MOVES FROM VIRGINIA ON CLIMATE ACTION? Gov. Terry McAuliffe will today make a significant announcement regarding the work of an advisory group looking at ways Virginia could reduce its carbon emissions at 11:30 a.m. in Alexandria, his spokesman tells ME. That comes on the heels of state Attorney General Mark Herring's advisory legal opinion last week that the Virginia State Air Pollution Control Board already has the authority to regulate carbon dioxide emissions via a cap on emissions from new and future power plants in the state. The moves suggest the state is preparing further efforts to address climate change even as the Trump administration halts and prepares to roll back federal efforts like the Clean Power Plan. The opinion did note that the Board had so far only regulated greenhouse gases via a limited permitting program.

MORE ETHICAL QUESTIONS AT EPA: Democratic Sens. Sheldon Whitehouse and Jeff Merkley are sending a letter this morning to Pruitt questioning how Elizabeth Bennett can serve as deputy associate administrator for intergovernmental relations given her prior lobbying work on a host of EPA issues with the National Rural Electric Cooperative Association. "Even if EPA were to determine some small subset of issues from which Ms. Bennett's prior lobbying does not disqualify her, installing someone who has lobbied for an organization that has attacked EPA's

efforts under both Republican and Democratic administrations as a public liaison for EPA suggests you have little regard for EPA's standing and reputation before Congress or the communities in which it works to protect public health," they wrote. The Trump administration's ethics pledge bars appointees from participating in any matter on which they previously lobbied for the first two years of government service.

LINE DRAWN ON EPA NOMINEES: Senate EPW ranking member [Tom Carper](#) says he's only received responses to two of the 15 letters he's sent to Pruitt for oversight and threatened to hold up other nominees without answers. "During his own confirmation process, Mr. Pruitt assured our committee that he would be responsive to members' inquiries," Carper told ME in a statement. "Before we move any additional nominees, Mr. Pruitt should commit to replying to this committee's requests and providing the answers he assured us he would."

UTILITY SHAREHOLDERS TO WEIGH CLIMATE MOTION: FirstEnergy Corp. shareholders are set to hold their annual meeting this morning and vote on a suite of proposals, including one suggesting the utility produce a report on "its strategy for aligning business operations" with the Paris Agreement. "FirstEnergy's commitment to coal has destroyed shareholder value for years," the proposal, [Item 10](#), from corporate responsibility group As You Sow states. "FirstEnergy adopted a commendable carbon target, but has not identified a path to achieving it, and its management remains focused on coal." As You Sow has unsuccessfully targeted other utilities with climate-related shareholder votes. FirstEnergy has urged opposition, calling the request "an onerous task."

But it's not without supporters. California's CalPERS, the nation's largest state public pension fund and owner of about 1.687 million FirstEnergy shares, has [pressed other shareholders](#) to back the proposal, which needs to crack 50 percent for the company to take the request "under advisement." The meeting starts at 8 a.m. in Akron, Ohio.

STILL WAITING: Sen. [Robert Menendez](#) has not received a satisfactory Treasury response on Russian oil firm Rosneft possibly acquiring a controlling stake of several refineries, his staff tells ME. Menendez in April flagged reports that CITGO owner PdVSA — owned by the increasingly shaky Venezuelan government — had put shares up for collateral on a loan from Rosneft. The Foreign Relations senior senator asked Treasury Secretary Steven Mnuchin to review the possibility of Russian control of three major refineries and several pipeline networks. Menendez will bring the matter up during Wednesday's hearings for Trump nominees to Treasury posts, his office said.

PJM DEFENDS STORAGE RULES: PJM Interconnection defended its new performance requirements for electricity storage projects in a Monday filing with FERC, arguing it had used its power to protect grid operations, Pro's Esther Whieldon [reports](#). That came in response to [complaints](#) from the Energy Storage Association and two electric storage developers that accused PJM of discriminating against storage technologies by requiring them to operate for longer periods than they were designed for. But PJM said those actions "were reasonably within" its discretion.

MEET AND GREET: Ninety members of the National Association of Chemical Distributors

are in D.C. today for meetings with various congressional offices, as well as agencies like EPA, FDA and DHS. They'll also be pushing for passage of Sen. [James Lankford's Truth in Regulations Act](#) (S.580), which establishes guidelines for the issuance of guidance documents from federal agencies.

REPORT: FOREST SERVICE DEPLETED AS THREATS INCREASE: The number of Forest Service law enforcement officers on duty at national forests has dropped one-sixth since 2010, and special agents have decreased by one-fifth over the same period, according to [data](#) released by Public Employees for Environmental Responsibility. That comes as [reported threats and assaults](#) against personnel jumped by nearly one-third, from 155 to 204, during 2016. "From what employees tell us even these figures under-report what is really going on out in the field," Kirsten Stade, PEER's advocacy director, said in a statement.

THAT'S A LOTTA MARCHERS: Approximately 1.07 million people worldwide participated in various events around the March for Science on Earth Day, according to [figures](#) the organization released Monday. Those include 100,000 estimated marchers in Washington, 70,000 people in Boston, 60,000 attendees in Chicago and 50,000 participants in both San Francisco and Los Angeles.

MAIL CALL! DON'T REOPEN OFFSHORE DRILLING: More than 100 House members, led by [Don Beyer](#), sent a [letter](#) to Interior Secretary Ryan Zinke Monday urging him not to reopen the Atlantic and Pacific oceans to new oil and gas drilling leases. "We do not believe that new oil and gas exploration or production activity in the Atlantic and Pacific Outer Continental Shelf is compatible with the sustainable coastal economies on which so many of our constituents and communities depend," the letter says. Three Republicans — [Frank LoBiondo](#), [Dave Reichert](#) and [Mark Sanford](#) — signed onto the plea.

MOVER, SHAKER: Robert Dillon, who ME readers likely remember helmed communications at the Energy and Natural Resources Committee for years, is headed back to Capitol Hill. He starts as communications director for Rep. [Kay Granger](#) this week; he was most recently with the American Council for Capital Formation.

Nathan Ohle has been named the new executive director of the Rural Community Assistance Partnership, which helps ensure safe drinking water and sanitary wastewater disposal to rural communities. He was recently senior advisor at the U.S. Economic Development Administration during the Obama administration.

Michael Parr has been named next president of American Bird Conservancy beginning June 1; he's currently the group's chief conservation officer.

QUICK HITS

— Bets on OPEC Rally Are Gone and That May Be Good for Crude. [Bloomberg](#).

— On his fifth day in power, South Korea's new president shut down 10 big coal-power plants. [Quartz](#).

— Former SolarCity CEO Lyndon Rive will leave Tesla. [Reuters](#).

— Rick Perry provides DNA, joins big data initiative. [Houston Chronicle](#).

— Murphy, Democratic front-runner, earned from pipeline companies he now opposes. [NorthJersey.com](#).

— Miss D.C. Kara McCullough, the new Miss USA, has a super-serious job. [Washington Post](#).

HAPPENING TODAY

8:30 a.m. — "Distorting Financial Markets: The Role of Disclosure, Sustainability and the Importance of Materiality," U.S. Chamber of Commerce, 1615 H St. NW

10:30 a.m. — Business groups presentation on advanced and renewable energy, Arnold & Porter Kaye Scholer LLP, 601 Massachusetts Ave. NW, 10th floor, conference room #10340

12:00 p.m. — Natural Gas Roundtable featuring New York Commissioner Diane Burman, American Gas Association, University Club, 1135 16th St. NW

3:15 p.m. — "[Leveraging Federal Funding: Innovative Solutions for Infrastructure](#)," Senate Environment and Public Works Subcommittee on Transportation and Infrastructure, 406 Dirksen

6:30 p.m. — "[Sustainable Profit: Investment Opportunities in a Changing Climate](#)," Harvard Business School Club, US Trust Penthouse, 730 15th Street NW

THAT'S ALL FOR ME!

To view online:

<https://www.politicopro.com/tipsheets/morning-energy/2017/05/advice-for-epa-on-regulatory-reform-022845>

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Trump EPA urges court to keep climate rule lawsuit on hold [Back](#)

By Alex Guillén | 05/15/2017 05:02 PM EDT

The Trump administration and the states and companies seeking to quash the Obama EPA's Clean Power Plan told a federal court Monday they want to keep the lawsuit over that landmark climate rule on hold indefinitely.

They argue a freeze would be preferable to a court decision to send the rule back to EPA without deciding on the whether the power plant carbon regulations violated the Clean Air Act. And they say that remanding the rule to the agency to review would just lead to headache-inducing

quagmires for EPA and the court.

If the court remands the rule, its opponents might file new lawsuits to preserve their legal claims, while environmentalists could challenge any EPA attempt to set new compliance deadlines.

Keeping the case on hold would also allow EPA to finish its review of the rule more quickly because it would not have to divert resources to addressing those new legal issues, the administration added.

"These consequences can be — and manifestly should be — avoided by continuing to hold this litigation in abeyance," EPA wrote in its brief.

EPA received back-up from the Clean Power Plan's opponents, who made similar arguments in their own brief.

When the D.C. Circuit Court of Appeals issued its 60-day stay last month, the judges asked all sides to weigh in on whether to keep the case on ice indefinitely — which could be a long time given the years that are likely needed to repeal the Clean Power Plan and resolve subsequent litigation — or send the rule back to EPA right now, without rendering a decision on its legality.

The rule's supporters, however, would prefer a third path.

Environmentalists, states that support the Clean Power Plan, clean energy groups and several utilities noted their first choice would actually be for the court to issue its ruling.

Those groups were likely buoyed by EPA's strong showing at oral arguments last year. After watching seven hours of arguments, many observers predicted EPA would prevail on most of the legal issues, though a win for the Clean Power Plan was not guaranteed.

Plus, green groups argue, there are several major legal questions the courts likely will need to answer at some point no matter what the Trump administration does now. That includes whether EPA can achieve emissions reductions through "fuel switching," also known as EPA's "beyond the fence line" approach. The court could also weigh in on the so-called 112 Exclusion, which the rule's challengers argued should prevent EPA from regulating in this manner, no matter the details.

But the court's order seeking opinions on remand versus abeyance indicate that the judges are no longer interested in issuing a ruling.

In that case, environmental groups argued, keeping the Supreme Court stay in place would "convert temporary enforcement relief pending judicial review into a long-term suspension of the Clean Power Plan, without any court having issued a decision on its legal merits and without following the administrative steps necessary to amend, suspend or withdraw a regulation."

Meanwhile, EPA and its challengers made similar arguments urging the court to maintain its hold on lawsuits over the Clean Power Plan's sister regulation that sets emissions limits for future

power plants, also known as the 111(b) rule or the new source performance standard.

That case was on a slower judicial track than the CPP. All sides had completed briefing, but last month the Trump administration convinced the court to delay arguments.

Meanwhile, [environmental groups](#), [supportive states](#) and [pro-rule utilities](#) said they would like to see this case continued through arguments and a decision by the court, but that in lieu of that they have no preference over remand versus abeyance.

Although the Clean Power Plan was stayed, the future plant rule has been in effect since it was released in 2015, and neither option would hurt its "effectiveness during any period of review by the new administration," environmentalists argued.

The court has no strict deadline to decide what to do. It has paused the lawsuits challenging both rules through June 27, but is under no obligation to act before then.

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PJM defends electricity storage performance rules [Back](#)

By Esther Whieldon | 05/15/2017 05:56 PM EDT

The operator of the PJM regional power market today defended its new performance requirements for electricity storage projects, arguing it had used its power to protect grid operations.

In a [filing](#) with FERC, PJM Interconnection responded to [complaints](#) from the Energy Storage Association and two electric storage developers that accused PJM of discriminating against storage technologies by requiring them to operate for longer periods than they were designed for. The companies and ESA argued PJM should have first obtained FERC's permission.

But PJM argues its actions "were reasonably within" its discretion.

"PJM must have the flexibility to change such operational protocols and technical implementation details as needed to maintain reliability and effectively operate the bulk power system," it said in the filing. Not being able to act as the need arises could damage generators' electrical equipment and possibly even trigger power outages, PJM said.

PJM also said that since it implemented the requirements, it had not seen a significant drop of electricity storage sources in the market, and that the companies operating those projects were simply trying to "obtain revenue certainty at the expense of impeding necessary operational changes."

PJM has been one of the biggest markets for battery storage technology in the U.S., and FERC is considering a rulemaking that would direct regional markets to find better ways to include the technologies.

WHAT'S NEXT: The commission cannot act on the complaints until its quorum is restored, which will not occur until President Donald Trump's two new nominees are confirmed by the Senate.

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Storage industry seeks FERC intervention in mid-Atlantic power market [Back](#)

By Esther Whieldon | 04/20/2017 03:40 PM EDT

The Energy Storage Association and two electric storage developers have accused the operator of the mid-Atlantic regional power market of discriminating against storage technologies by requiring them to operate for longer periods than they were designed for.

In a pair of recent complaints, ESA, Renewable Energy Systems Americas and Invenergy Storage Development LLC asked FERC to direct PJM Interconnection to revoke a policy it put in place in January that effectively asks battery storage technologies to provide services beyond the short-term, 15-minute grid management services they have provided under prior rules.

PJM made the changes to help manage an increasingly turbulent grid as more power plants retire and renewable generation comes online. But the developers say they should not be made to bear the brunt of those challenges.

If PJM continues to make it "harder for energy-neutral storage resources to operate, [storage project owners] will need to either modify their technology at significant and very likely prohibitive cost, or no longer participate in the regulation market — the market for which they were specifically designed," Invenergy and Renewable Energy Systems Americas said in a joint [filing](#).

PJM has been one of the biggest markets for battery storage technology in the U.S. and FERC is considering a rulemaking that would direct regional markets to find better ways to include energy storage technologies. But the agency's lack of a quorum means it cannot finalize the rule nor act on the storage industry's new complaints for the foreseeable future.

WHAT'S NEXT: FERC will be accepting comments on ESA's [complaint](#) through May 15, and PJM today asked the commission to set the same comment deadline for the developers' filing.

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Yes, very	Somewhat	Neutral	Not really	Not at all

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