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**From:** POLITICO Pro Energy  
**Sent:** Wed 8/2/2017 9:42:59 AM  
**Subject:** Morning Energy: Pruitt cleared by scientific integrity panel — New front in RFS battle — What will Southern have to say about Vogtle today?

By Annie Snider | 08/02/2017 05:41 AM EDT

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

### **PRUITT'S CLIMATE COMMENTS CLEARED BY SCIENTIFIC INTEGRITY PANEL:**

A panel of EPA employees has concluded that Administrator Scott Pruitt's controversial assertion that carbon dioxide is not the primary driver of climate change during a television interview in March did not violate the agency's scientific integrity policy. That policy "specifically encourages employees to express their opinion should the employee disagree with scientific data, scientific interpretations, or scientific conclusions," the panel of high-ranking EPA officials wrote, noting that Pruitt "did not suppress or alter Agency scientific findings."

**Lost in the mail?** The panel's conclusion was included in a [letter](#) from Thomas Sinks, director of EPA's Office of the Science Advisor, addressed to the Sierra Club, which had formally complained about Pruitt's climate comments. But the green group said Monday evening that it had not received that letter, which first appeared in conservative media outlets. For its part, EPA's press office circulated an [article](#) from the Washington Free Beacon to publicize the letter.

Elena Saxonhouse, a senior attorney with Sierra Club, said in a statement that her group was told by EPA staff that the proper process is for the complaining party to be informed first. Moreover, 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."

**HAPPY WEDNESDAY.** I'm your guest host, Annie Snider, and I've got you for the rest of the week. The NRDC's Joan Matthews is the competition to beat, being the first to send in the correct trivia answer for a second day in a row. Benjamin Harrison, Herbert Hoover, Lyndon B. Johnson, Bill Clinton and Barack Obama were the five presidents born in August, and Warren G. Harding was the one to die this month. For today: On this day in 1939, Albert Einstein and Leo Szilard wrote to President Franklin D. Roosevelt; what did they ask him to do? Send your answers — and your tips, energy gossip and comments to [asnider@politico.com](mailto:asnider@politico.com) or follow us on Twitter [@AnnElizabeth18](#), [@AnthonyAdragna](#), [@Morning\\_Energy](#) and [@POLITICOPro](#).

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**NUCLEAR EYES TURN TO GEORGIA:** Now that the V.C. Summer nuclear project in South Carolina appears to be on its last legs after the two owners announced plans to ditch the effort, the nuclear policy universe turns its attention to Southern Co., which holds its quarterly earnings call today. Southern, through its Georgia Power unit, is the lead owner of the two-reactor Vogtle plant expansion facing a lot of the same struggles Summer did: cheap natural gas,

cost overruns, anxious investors, and the bankruptcy of their primary contractor, Westinghouse. Taxpayers also have a stake in Vogtle. The Energy Department has provided loan guarantees for \$3.4 billion to Georgia Power, \$3.1 billion to Oglethorpe Power Co., and \$1.8 billion to the Municipal Electric Authority of Georgia. More than \$5.3 billion of that money has been advanced to the firms since Feb. 2014, according to Treasury Department records. SCANA, the majority owner of the Summer project, saw its stock rise 5 percent each day since announcing plans to abandon the reactors.

**But many came to Vogtle's pre-defense** since Monday, including two top members of Georgia's utility regulator (its vice chairman, Tim Echols, has tweeted on the subject more than a dozen times). It goes something like this: Georgia Power has more than three times as many customers (making the cost impacts of the project lower), Vogtle is getting a \$3.7 billion payout from Westinghouse parent company Toshiba (\$1.5 billion more than Summer is getting), and the Georgia project has been seen as being better managed. Still, every month of indecision costs the Vogtle co-owners about \$100 million. Rather than steal Southern's thunder, an Oglethorpe spokesman told ME the Vogtle co-owners are still working "to develop a detailed schedule and cost-to-complete for the project." Southern CEO Tom Fanning will hold court with investors starting at 1 p.m.

**Meanwhile, in the Sunshine state** nuclear critics see the South Carolina shut down as a signal that the supposed "nuclear renaissance is over, Politico Florida's Bruce Ritchie reports. Florida Power & Light Co. told the state's Public Service Commission regulators in May planning to continue its "pause" of two new nuclear units at its Turkey Point power plant south of Miami while it seeks to learn from efforts further north.

**FAREWELL, DREAMS OF SUMMER RECESS:** August got a whole lot sweeter when John Cornyn told reporters Tuesday that the upper chamber will, indeed, stay in session through next week, cutting its precious August recess time in half.

**Minibus idling in the driveway:** Majority Leader Mitch McConnell started the process to fast-track the House-passed appropriations measure funding the Defense and Energy Departments, as well as the Army Corps of Engineers, Veterans Administration and Legislative branch. But don't get your hopes up yet — leaders use the "Rule 14" process, which allows a measure to bypass committees and head straight to the floor, for dozens of bills each month that go exactly nowhere. Moreover, both McConnell spokesman Don Stewart and a Senate appropriations aide warned not to read too much into the majority leader's gesture (h/t Budget & Appropriations Brief).

**But what about the noms?** Odds aren't looking good for most (any?) of the energy nominees awaiting confirmation moving during that extra time either. ME caught up with Sen. Dean Heller about his hold on deputy Energy secretary nominee Dan Brouillette and the Nevada Republican said there's no deal, "just conversations and discussions." The two Republican FERC nominees also don't look like they'll be gaining any momentum before recess, in part because the White House still hasn't coughed up the Democratic nominee Trump announced in June.

When asked about the two GOP picks for the Nuclear Regulatory Commission, EPW Chairman

John Barrasso said he generally wants "every one" of the Senate's pending nominees confirmed. But Barrasso also said he hasn't talked to his ranking member, Sen. Tom Carper — which is a big red flag. Carper has been saying for months that he wants NRC Commissioner Jeff Baran, a Democrat, to get reconfirmed alongside the new commissioners, both of whom he supports. Without Carper's blessing, it's hard to see how they get into a big package that needs unanimous support.

**BUT SOMEONE IS CONFIRMED:** The Senate approved Lucian Niemeyer to be an Assistant Secretary of Defense for Energy, Installations and Environment Tuesday. Niemeyer, a retired Air Force lieutenant colonel, previously oversaw military installations and federal energy and environmental programs as a staffer on the Senate Armed Services Committee.

**OLD PROBLEM, NEW HEADACHES:** Another battle in the long-running war over the Renewable Fuel Standard may be ready to break out in the wake of last week's D.C. Circuit Court of Appeals decision voiding EPA's use of a waiver to lower the amount of ethanol that refiners had to blend into the gasoline supply in 2016, as compared with targets set by Congress more than a decade earlier.

The issue, Eric Wolff reports, is that the court offered little guidance on how to correct that problem for a year that is already in the history books, leaving EPA to decide whether to force refiners to spend up to a half a billion dollars on additional compliance credits for fuel that they've already sold, or find a way to let refiners off the hook.

The obvious solution — requiring additional Renewable Identification Numbers — has drawn protests from refiners. Instead, they argue the agency could simply rewrite the rule to reflect the actual amount of biofuels used in 2016, just as it did in previous years. But ethanol producers argue the agency should not be able to simply paper over its mistake. Here's Eric with more.

**DEEPWATER, TESLA TEAM UP ON OFFSHORE WIND PROJECT:** Tesla and Deepwater Wind are proposing an offshore wind project that would be paired with battery storage. The 144-megawatt "Revolution Wind" project Deepwater wants to build offshore Massachusetts would be paired with a 40 megawatt-hour battery storage system from Tesla. The companies were among dozens of wind, solar, hydropower and even high-voltage transmission line developers that last week bid for 15-year to 20-year "clean energy" contracts with utilities in Massachusetts. The commonwealth posted the bids online Tuesday. Deepwater Wind in December brought the nation's first offshore wind project online offshore of Rhode Island.

**WEDNESDAY IS FOR WATER:** Get ready for some Senate Energy and Natural Resources water wonkery this morning, when Arizona Republican Jeff Flake's Water and Power subcommittee will look at how infrastructure, management and innovation can improve water security in the arid West. The hearing will set the stage for the inclusion of Western water issues in the infrastructure package some lawmakers are still holding out hope for. With Arizona's top water official testifying, the hearing could also shed light on an emerging deal between the U.S. and Mexico to share in shortage along the over-allocated Colorado River.

**If you go:** The hearing is at 10 a.m. in 366 Dirksen.

**DEMS QUESTION ZINKE'S REVENUE GOALS:** Senate Energy and Natural Resources Committee ranking Democrat [Maria Cantwell](#) and House Natural Resources Committee top Democrat [Raul Grijalva](#) in a Tuesday [letter](#) to Interior Secretary Zinke questioned whether he is keeping his pledge to ensure the American people receive their fair share when companies use public land to extract oil, gas and coal resources. The agency's "actions so far this year have served to do the exact opposite, reducing the return that taxpayers receive instead of increasing it," they wrote. Cantwell and Grijalva asked Zinke to answer a number of questions, including how his reinstated and expanded royalty policy committee would address these fiscal issues.

**EPA APPROVES FLINT LOAN FORGIVENESS:** The city of Flint is [off the hook](#) for \$21 million in federal drinking water loans, EPA said Tuesday. The move, requested by GOP Michigan Gov. Rick Snyder, frees up more money for the city's efforts to replace lead service lines and upgrade its infrastructure in the wake of a major lead contamination crisis. "Rebuilding our nation's infrastructure is one of the President's top priorities, and EPA is especially focused on those communities, like Flint, that need it the most," EPA Administrator Scott Pruitt said in a statement.

**LEGAL FILING OF THE DAY:** The American Civil Liberties Union's West Virginia chapter wants to defend TV comedian John Oliver in the lawsuit over his recent segment on coal magnate Bob Murray. The ACLU's "friend of the court" [brief](#) filed on Tuesday argues that Oliver had various constitutional rights to air the segment, which among other things referred to Murray as a "geriatric Dr. Evil." Murray's suit is an attempt "to chill protected speech and silence the marketplace of ideas," the ACLU told a federal court in a brief which includes sections titled "Anyone Can Legally Say 'Eat S---, Bob!'" and "You Can't Sue People for Being Mean to You, Bob."

The group notes that while its brief "pokes fun at the absurdity of this case, the legal issues raised by it are anything but comical." (Still, the ACLU included a photo comparison between Murray and the fictional Dr. Evil on page 14.) Murray and his company are currently trying to get the case sent to a state court and secure an order stopping HBO from sharing the segment further.

**GREENS CALL FOR SCRUTINY OF ENHANCED OIL RECOVERY:** In a [report](#) out this morning, Clean Water Action is calling for increased environmental protections around the common practice that uses fluids or gasses to push oil to the surface. Enhanced oil recovery is regulated under a Safe Drinking Water Act program that hasn't seen its regulations updated in decades, requires little monitoring and data collection, and is targeted for a 30 percent cut under Trump's budget proposal, the report finds. It argues that it's difficult for state and federal agencies to push for stricter oversight without evidence of violations or proven cases of drinking water contamination, but that with meek budgets, these are almost impossible to collect.

**MAINE LEGISLATURE VOTING ON VETOED SOLAR BILL:** The Maine Legislature is slated to vote today on an override of Gov. Paul LePage's veto of [L.D. 1504](#), a measure that would have utility regulators formulate new recommendations on the future of net metering in 2019. The bill does not stop the state from starting to phase out its net-metering program in the

meantime. The Legislature passed the measure in June with a veto-proof majority but it remains unclear whether lawmakers will hold their ground.

**MOVER, SHAKER:** Jamie Nolan leaves her post as communications director for DOE's SunShot Initiative today to launch her own communications consultancy focused on energy, clean tech, climate and transportation.

## QUICK HITS

— Islamic State and climate change seen as world's greatest threats, poll says. [New York Times](#).

— Tesla's longtime battery technology director leaves company. [Bloomberg](#).

— 59,000 farmer suicides in India over 30 years may be linked to climate change, study says. [Washington Post](#).

— Big Oil Bites the Low-Price Bullet, [Wall Street Journal](#).

## HAPPENING TODAY

10 a.m. - The Senate Energy and Natural Resources Water and Power Subcommittee holds a [hearing](#) on water security and drought preparedness, Dirksen 366.

2:30 p.m. - Citizens for Responsible Energy Solutions Forum hosts a [discussion](#) on the future of "Job Growth in the Solar Industry and Free Trade," G11 Dirksen.

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<https://www.politicopro.com/tipsheets/morning-energy/2017/08/pruitt-cleared-by-scientific-integrity-panel-024031>

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**Battle lines emerging over how EPA can fix last year's ethanol mandate** [Back](#)

By Eric Wolff | 08/01/2017 06:27 PM EDT

Ethanol producers and oil refiners are bracing for a future fight over problems in the past.

The dilemma fit for an episode of "Doctor Who" stems from EPA's decision to reduce the amount of ethanol that refiners had to blend into the gasoline supply in 2016, compared with targets Congress had mandated more than a decade before. The D.C. Circuit Court of Appeals last week [voided](#) EPA's use of a waiver to lower the Renewable Fuel Standard target, but it offered little guidance on how to correct that problem for a year that is already in the history books.

EPA now must decide whether to force refiners to spend up to a half-billion dollars on additional compliance credits for fuel they have already sold — or to find a way to let bygones be bygones. The Trump administration has made it a priority to reduce compliance costs for businesses, and the law provides numerous options EPA could use to effectively let refiners off the hook, though ethanol producers likely would fight any move they saw as too friendly to the oil industry.

The court's decision would bump up the requirement for blending conventional biofuel into the fuel supply in 2016 by 500 million gallons, to 15 billion gallons. Since the fuel is already blended, the agency would have to ask refiners to make up the difference by turning in Renewable Identification Numbers, the credits used to prove RFS compliance. It would take between \$400 million and \$500 million worth of RINs to close that gap, according to Morgan Stanley Research.

The D.C. Circuit did not set any deadline for EPA to decide what to do, and sources on both sides of the dispute agree the question of how to address the 2016 volumes may remain unresolved indefinitely. An EPA spokesman said the agency is still reviewing the case.

Rich Alonso, an attorney at Sidley Austin who represents merchant refiners, says that approach would not achieve the goals of the RFS, which Congress first enacted in 2005 and expanded in 2007 to get more corn ethanol and advanced biofuels into the gasoline supply.

"I think that would be totally unreasonable. At that point you're asking people to pay more cash. There's no relationship between more RINs and blending more ethanol," he said. "I don't expect this administration to do that. It's an option, but people relied on the 2016 volumes. Their compliance books are closed. Refineries are suffering great economic stress and harm today — to increase that stress and harm, that would push a lot of refiners to the breaking point."

Biofuel advocates said forcing refiners to comply with the higher target for 2016 would not be too painful.

"They should call in the RINs," said Brooke Coleman, executive director of the Advanced Biofuels Business Council. "There are reasonable ways to do it."

But there are plenty of easier options, Alonso argued. The simplest would be to not enforce the rule for 2016. EPA would rewrite the rule without the waiver and then let all the refiners slide.

EPA could also rewrite the rule to reflect the actual amounts of biofuel used in 2016, an approach EPA used for 2014 and 2015, when it blew past mandatory deadlines for setting volumes. The D.C. Circuit upheld the rules for those two years at the same time it remanded the 2016 volumes back to the agency. Or EPA could take advantage of administrative options, like unretiring RINs that had expired unused, handing out free RINs to allow compliance, and so on.

Frank Macchiarola, downstream director for the American Petroleum Institute, a major oil trade association, still thinks EPA could use its general waiver authority, but it should use an alternative justification. The D.C. Circuit rejected EPA's logic that it could reduce the blending

requirement because of insufficient demand, saying the waiver is intended for supply shortfalls when ethanol producers cannot meet program requirements.

But Macchiarola argues that the agency could rewrite the rule using its waiver by justifying it as preventing severe economic harm.

"The statute could not have envisioned a situation where there would be such marketplace disruption by adhering to the statutory volumes," he said.

Ethanol producers say EPA should not be able to simply paper over its mistaken use of the waiver last year.

"We are still reviewing the decision and our options, but simply ignoring the court order or papering over their obligation to revisit the 2016 RVO is not an option for EPA," Renewable Fuels Association CEO Bob Dinneen said in a statement. "It is important to note that there's only a 500 million gallon difference from EPA's 2016 RVO and what the statute required."

Dinneen said the agency had recently revised the number of 2016 RINs upward by almost 500 million gallons, so using credits to comply wouldn't be difficult. And he said the agency could allow companies to carry forward their higher obligation into future years, to ease the pain of the transition. Coleman said there's more ethanol this year and last year, so there are more RINs available for retiring.

Coleman and API's Macchiarola agree on one thing, though: EPA might not do anything for a while.

"They could put it at the end of the priority list," Macchiarola said. "They have plenty to do."

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