

To: Jackson, Ryan[jackson.ryan@epa.gov]
From: Morning Energy
Sent: Thur 9/14/2017 2:03:59 PM
Subject: POLITICO's Morning Energy: Replacing Clean Power Plan could disappoint conservatives — Domenech nomination clears Senate — More regulatory waivers extended after hurricanes

By Anthony Adragna | 09/14/2017 10:00 AM EDT

With help from Eric Wolff

PRUITT'S CARBON TIGHTROPE BALANCING ACT: Leaving the door open to rewrite the Obama administration's Clean Power Plan would help President Donald Trump's administration honor the wishes of power companies looking to avoid years of legal uncertainty but might not satisfy the demands of some conservative activists, Pro's Emily Holden [reports](#). EPA wants to move to collect comments about whether to write a new regulation, and is likely to write a new rule given the agency would be on much shakier legal ground if it simply opted not to regulate carbon dioxide from power plants.

Any replacement rule would be unlikely to take a meaningful bite out of carbon levels and would be based on a much narrower interpretation of EPA's Clean Air Act authority. That may be enough in the interim for some conservatives who would prefer a straight withdrawal of Clean Power Plan but who wouldn't oppose a replacement rule. "Ultimately, the responsibility to fix this mess lies with the Congress, so until they act, the only thing the Administration can do is minimize the damage," said Tom Pyle, a conservative lobbyist with the American Energy Alliance who led Trump's Energy Department transition team. But the details could have political implications for Pruitt, who is widely seen as a potential candidate for the U.S. Senate in his native Oklahoma.

Most utilities assume future regulations or laws will ultimately require them to curb carbon emissions even if the Obama administration's Clean Power Plan goes down and support EPA issuing a replacement rule - albeit a much weaker one. "We think that future regulation of carbon emissions from power production is likely, and could provide additional planning certainty," Tammy Ridout, a spokeswoman with coal-heavy AEP, said. Regardless of the approach Pruitt ultimately selects, environmental groups are sure to vigorously contest his efforts in court.

DOMENECH CLEARS SENATE: Trump's pick for Interior assistant secretary nominee, Douglas Domenech, cleared the Senate by voice vote late Wednesday. The veteran of George W. Bush's Interior Department who was on the Trump transition team's landing team at the agency said during the confirmation process that he [still believes](#) that the human contribution to climate change is very small. Domenech also previously served as Virginia's secretary of natural resources.

But others will wait: Efforts to fill out the Trump energy team must wait a few more days again after the Senate Energy and Natural Resources Committee shelved votes slated for today on the nominations of five FERC, DOE and Interior nominees, Pro's Darius Dixon [reports](#). Votes are now slated for next Tuesday.

Democrats threaten to delay Bodine: Two EPW Democrats - [Sheldon Whitehouse](#) and [Jeff Merkley](#) - [threatened](#) to hold up Susan Bodine's nomination to be EPA enforcement chief until she provides details about her advisory role to the administrator and whether she played a role in the agency's decision to enforce its methane rule on a "case by case" basis. They said Bodine's assumption of a role at EPA without being confirmed first may run afoul of federal law.

EPA nominees up next week: Four EPA nominees will get their day at Senate EPW for a hearing next Wednesday. They are: Michael Dourson to run the agency's chemical office; Matt Leopold to be general counsel; David Ross to run the water office; and William Wehrum's contentious bid to be EPA's top air official. The committee also will consider Jeffery Baran's renomination to another five-year NRC term.

WELCOME TO THURSDAY! I'm your host Anthony Adragna, and Bracewell's Frank Maisano named Schuyler Colfax and John Nance Garner as the two House speakers that became vice president. For today, and in keeping with the theme: Who is the lone speaker that went on to become president? Send your tips, energy gossip and comments to aadragna@politico.com, or follow us on Twitter [@AnthonyAdragna](#), [@Morning_Energy](#), and [@POLITICOPro](#).

TEMPORARY REGULATORY WAIVERS GALORE: With Florida and Texas still restoring power and taking stock of damage following Hurricanes Harvey and Irma, federal regulators are temporarily relaxing regulatory requirements to help those states get back online. As POLITICO Florida's Bruce Ritchie [reports](#), the EPA acknowledged in a [letter](#) Wednesday it recognized the need to use "flexibility" provided in federal stormwater discharge permits for facilities affected by the storm.

Jones Act waiver extended: Citing "severe disruptions of the oil supply system," DHS announced Wednesday it [extended](#) a Jones Act waiver through Sept. 22 to alleviate fuel shortages in the areas affected by the hurricanes. The decision will allow foreign-flagged vessels to deliver fuel from U.S. refineries to Florida and other impacted states, something barred under the 1920 Jones Act.

Texas' too: EPA [said](#) late Wednesday it would waive fuel requirements under the Clean Air Act for reformulated gasoline and low volatility gasoline in Texas through Oct. 1 to "help address the emergency circumstances" in the state from the hurricanes. In addition, the agency also continued to allow the use of Texas Low Emission Diesel in 110 Texas counties.

Three's a trend! OMB Chief Mick Mulvaney [told](#) CNN's Jake Tapper on Wednesday there's "plenty of time later" to discuss climate change but said the focus right now should be on helping hurricane victims in Texas and Florida. "I'd be more than happy to have a longer discussion another day about climate change, man-made climate change," he said. Energy Secretary Rick Perry previously said now's "[not the time](#)" to discuss climate change, while EPA Administrator Scott Pruitt called such talk "[insensitive](#)."

Curbelo fine with climate talk: Back on Capitol Hill after responding to Hurricane Irma's impacts on his district, Rep. [Carlos Curbelo](#) said climate change should be a part of post-storm discussion. "It shouldn't be the first thing people talk about - the first concern has to be all the

people in the Florida Keys and throughout the state of Florida who are struggling," he told reporters. "[But] it's certainly not irresponsible to highlight how this storm was probably fueled - in part - by conditions that were caused by human-induced climate change."

Backs Nelson's climate comments: Curbelo said he "absolutely" agreed with his state's senior senator, [Bill Nelson](#), that Republicans were "[denying reality](#)" if they refused to acknowledge climate change. "I am critical of both the deniers and the alarmists because they don't contribute much to solving this problem," he said. "The deniers deny it so you can't address a problem you don't recognize and the alarmists scare everyone and take credibility away from the issue, and people who are convincible then shy away. People need to talk about this in a sober way, in a rational way."

Be on the lookout: Curbelo said his bipartisan Climate Solutions Caucus should hit 60 members in the near future, which would triple its membership from last Congress. The caucus grew to 56 members on Tuesday with the additions of Republicans [Chris Collins](#) and [Pat Tiberi](#) and Democrats [John Larson](#) and [Nydia Velazquez](#).

HOUSE PANEL TAKES FIRST LOOK AT RELIABILITY: They've split the original hearing into two, but the House Energy and Commerce Energy Subcommittee takes a first look at various issues associated at the reliability of the U.S. electric grid. Making his first congressional appearance since confirmation is FERC Chairman Neil Chatterjee. Also testifying is Gerry Cauley, president of the North American Electric Reliability Corporation, and Patricia Hoffman, an official within DOE's Office of Electricity. The background memo for the hearing, which kicks off at 10 a.m. in Rayburn 2123, is available [here](#).

HERE'S SOMETHING YOU WON'T SEE EVERYDAY: Still looking to drum up momentum for their bipartisan bill boosting carbon capture and sequestration technologies, one of the Senate's most unusual possible quartets - [Heidi Heitkamp](#), [Shelley Moore Capito](#), [Sheldon Whitehouse](#) and [John Barrasso](#) - participate in an event hosted by the Center for Climate and Energy Solutions on the latest innovations in the technology and efforts to speed its deployment. It kicks off in Hart 902 at 8:30 a.m. Details [here](#).

PARTS OF EPA DISCHARGE RULE DELAYED: EPA issued a final [rule](#) Wednesday formally delaying key compliance dates from a 2015 regulation limiting toxic discharges in power plants' wastewater streams, Pro's Alex Guillén [reports](#). Specifically, the agency will delay deadlines related to limits on discharges of flue gas desulfurization wastewater and bottom ash transport water, two waste streams associated with burning coal for electricity, while it reconsiders those standards. EPA said the delays will provide annualized utility cost savings between \$27.5 million and \$36.8 million.

Environmental groups vowed to sue: Mary Anne Hitt, director of Sierra Club's Beyond Coal campaign, said in a statement her group would take "immediate action" to fight a decision she called "so unconscionable from a public health - and common sense - perspective, that [Pruitt] couldn't even name a valid legal reason for the delay." Earthjustice Attorney Thomas Cmar called the rule "a bold-faced gift to the coal industry at the expense of the health of families everywhere."

PROBE OF EPA GRANT PROCESS SOUGHT: The Center for American Progress and Union of Concerned Scientists are today asking EPA's inspector general in [a letter](#) to investigate the agency's grant review process, rumored cancellation of some grants and allegations of political interference. "We urge your office to begin an investigation of these matters immediately," they write.

REVAMPED FEDERAL LEASING PROGRAM SOUGHT: The Wilderness Society, along with several other petitioners, are [asking](#) Interior and BLM this morning to revamp the fiscal terms and management processes regarding oil and gas leasing on federal lands. The petitioners argue their reform proposals would not harm, slow, or stop energy production on public lands. "Analyses of these decades-old [current] policies has shown that they are harming the taxpayers that the BLM is obligated to ensure receive the benefits of leasing and the public lands that BLM is obligated to ensure are managed for multiple use and sustained yield," they write.

HIDDEN DANGER IN OKLAHOMA? Massive oil storage tanks in Cushing, Okla. could be growing more vulnerable by the day as man-made earthquakes stemming from fracking tests their limits, Kathryn Miles reports in POLITICO Magazine. Five of the largest energy companies each said have procedures and protocols for natural disasters, but that they would not comment on the specific designs of their tanks, nor how those tanks would fare in a major earthquake. Read the full thing [here](#).

NRDC SEEKING REHEARING ON REFRIGERANTS CASE: The Natural Resources Defense Council plans to ask the D.C. Circuit for an en banc rehearing of [last months' decision](#) striking down an EPA rule limiting use of hydrofluorocarbons, a global warming exacerbating coolant. NRDC believes the majority in the 2-1 decision erred in its determination that the law was clear and did not require agency interpretation, known as Chevron Step 1. "[D.C. Circuit Judge Brett] Kavanaugh interprets the law in a way that eviscerates the program," said David Doniger, head of climate programs for NRDC. "Everybody understood to this point that the substitutes for ozone depleting chemicals were replacements ... and when new ones are developed safer than the old ones, the old ones are supposed to give way." HFCs fall out of the atmosphere faster than CO2, but have a far higher global warming potential.

Honeywell, too? "We believe the EPA's regulation is well-supported by the law and was in the best interests of the public, industry and the environment," a spokeswoman for Honeywell International Inc. said in an email to ME. Honeywell makes next generation coolants. "We are closely reviewing the decision and are likely to pursue an appeal, and are already taking steps to ensure that the accelerated transition to HFC alternatives continues."

FOR YOUR REFERENCE: Advanced Energy Economy today released seven specific [issue briefs](#) as policymakers consider ways to modernize the U.S. electric grid. They cover: advanced metering; access to data; optimizing capital expenditures; distributed energy resource ownership; using energy efficiency as a resources; performance-based regulation and designing rates in a distributed energy resource future.

BETTER LUCK NEXT YEAR? Two ambitious bills in California - laying the groundwork for

a regional electricity grid and eventually phasing out use of fossil fuels - won't advance this year, a key committee chairman told the Los Angeles Times Wednesday. "There's not a lot of time for the engagement we need to make it work," Assemblyman Chris Holden said, adding they should be considered as part of a "comprehensive conversation" in 2018. The legislative session ends Friday and the deadline for amending legislation was Tuesday night.

REPORT: CLOSING COAL PLANTS MEANS BIG BUCKS: Phasing out inefficient coal plants would save U.S. customers up to \$10 billion annually by 2021, a new report from Carbon Tracker finds. Constructing combined cycle gas turbines will be more cost-effective by the mid-2020s than continuing to operate 78 percent of the nation's current coal fleet, the study concludes. "The US power sector remains entirely unprepared for a coal phase-out consistent with a below [2 degree] C outcome," it finds, referring to the goal of the Paris climate agreement to limit global temperature increases.

NEW EDF AD USES HARVEY FOOTAGE: The Environmental Defense Fund is launching a new ad in the Washington area for three weeks using footage from the Arkema plant incident in Texas. The ad warns Congress that cutting the agency's budget could harm disaster response moving forward.

MOVER, SHAKER: Nick Conger starts a new gig as former Vice President Al Gore's communications director in Nashville on Oct. 2. The Obama administration EPA veteran leaves his current post as a press secretary at NRDC on Sept. 22. "I couldn't be more thrilled to join [Gore's] team and help shape his public activities," he writes of his role.

QUICK HITS

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- Former Vice President Al Gore: Investors can lead climate change battle. CNBC.
- US judge cites tribal sovereignty in dismissing coal lawsuit. AP.
- Colorado outlines how new pipeline rules will be considered after fatal Firestone explosion. Denver Post.
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