

To: Dravis, Samantha[dravis.samantha@epa.gov]
From: POLITICO Pro Energy
Sent: Tue 11/28/2017 10:39:07 AM
Subject: Morning Energy: Clean Power Plan fever takes hold today in West Virginia — Keystone pipeline restarts today after spill — McCaskill has more questions on Whitefish

By Anthony Adragna | 11/28/2017 05:37 AM EDT

With help from Emily Holden

HEARING TIME! Some of the Clean Power Plan's biggest critics will urge EPA to replace the regulation at hearings beginning today in West Virginia — a message that conflicts with political pressures Administrator Scott Pruitt faces from conservative interests who want him to deny man-made climate change. The National Rural Electric Cooperative Association, U.S. Chamber of Commerce and representatives of major utilities that all opposed the rule will nonetheless call for EPA to write a new one that will stand up to lawsuits and provide planning certainty.

What they're thinking: The Electric Reliability Coordinating Council, which represents heavyweight utilities such as Southern, Duke and Ameren, says EPA should write flexible standards aimed at improving coal plant efficiency. NRECA, which speaks for many coal-reliant, consumer-owned co-ops, wants EPA to draft a rule and defend it through lengthy legal battles before the end of this administration. "The swing of the pendulum back and forth doesn't make it any easier to keep power costs affordable and power reliable," said Kirk Johnson, NRECA's senior vice president of government relations. "We've urged EPA to advance the ball on replacing the Clean Power Plan. We do think it's worth moving expeditiously to craft a replacement regulation." The U.S. Chamber of Commerce, which has repeatedly attacked the Clean Power Plan as job-killing, will argue for "durable and achievable standards," according to prepared remarks.

But that's not the only take: The influential companies lobbying for a new rule could run up against climate change-denying groups like the Heartland Institute and coal CEO Bob Murray, who want Pruitt to fight a science-based endangerment finding requiring climate regulations and would see a new rule as tacit acceptance that the finding is unbeatable. EPA will have to address the issue in its advanced notice of proposed rulemaking, which is expected to raise questions about whether EPA should work on a replacement rule at all. And coal miners will appear today to support withdrawing the rule.

Greens out in force too: The Sierra Club will host its own alternative hearing at the nearby University of Charleston. Bill Price, a regional Sierra Club staffer, said EPA is holding the sole hearing in West Virginia to try to make it look like there's support for the repeal. But he says many West Virginians welcomed the rule because of the job opportunities it could create in energy efficiency and renewable power.

Reminder: EPA will accept comment on its proposed repeal through Jan. 16.

WELCOME TO TUESDAY! I'm your host Anthony Adragna, and Glover Park Group's Hayley Moller correctly guessed that approximately 42 percent of Americans have valid

passports (There were 136,114,038 valid passports in circulation in 2017, per the State Department, and the U.S. population at the start of the year was 324,309,805, according to the Census). For today: Who was the most recent House lawmaker to posthumously win reelection? 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).

KEYSTONE BACK IN (REDUCED) BUSINESS: TransCanada announced Monday its Keystone pipeline would resume operations today at "reduced pressure" as it recovers from a South Dakota spill. "We are communicating plans to our customers and will continue working closely with them as we begin to return to normal operating conditions," the company said. TransCanada said plans to restart the line have been reviewed and cleared by PHMSA.

ICYMI, the company also asked the Nebraska Public Service Commission to "address questions" raised by its decision approving an alternate route for a proposed expansion of the Keystone pipeline through the state, Pro's Ben Lefebvre reports.

LATEST IN ENCRYPTED APP PROBE: Cause of Action is today filing a lawsuit in federal court seeking to compel the release of records from EPA about its efforts to scan for whether encrypted messaging apps, especially Signal, had been installed on agency equipment by employees. A prior lawsuit related to unfilled FOIA requests revealed records showing the agency was probing the use of encrypted apps by career staff following a POLITICO story detailing how a small group of employees had resorted to encrypted communications as they figured out how to respond to the Trump administration.

HOW TO KEEP THE GOVERNMENT RUNNING: Congressional leaders meet with President Donald Trump today on the thorny issue of how to keep the government open but there are just 12 days left until funding runs out, Pro Budget & Appropriations Brief reports. But Washington is no longer wondering if Congress will need to lean on another stopgap spending bill — the question is: For how long?

KEEP AN EYE HERE: Supreme Court justices seemed divided Monday on a case focusing on two rival oil companies that challenged the constitutionality of the Patent and Trademark Office's system for handling patent challenges outside the courts, POLITICO's Sarah Karlin-Smith reports. Oil States Energy Services argued that the existing agency process, known as inter partes review, is unconstitutional because patents are private property that can only be taken away through the court system.

ACCESS DENIED: The 9th Circuit Court of Appeals said Monday it won't transfer a lawsuit over one of the agency's implementation rules under the reformed Toxic Substances Control Act to another court, Pro's Alex Guillén reports. The decision means the 4th Circuit, which said it would wait to decide its path forward until the 9th Circuit had ruled, could choose to transfer its evaluation rule lawsuit to the 9th Circuit or instead to keep it.

SCIENCE PANEL LOOKS AT WOTUS: The House Science Committee subpanel hears perspectives on states' role in the future of the waters of the U.S. regulation today at 10 a.m. Arguably the most interesting witness to appear is Ken Kopocis, who served for years as the top

water official at EPA during the Obama administration but never got a vote in the Senate.

FERC, DOE BRASS SPEAK THIS MORNING: FERC Chairman Neil Chatterjee delivers remarks to the Consumer Energy Association's "Future of Electricity Forum" today at 9:20 a.m., followed by DOE Under Secretary for Energy Mark Menezes. Other notables expected to speak include Reps. [Richard Hudson](#) and [Bill Flores](#).

TAKING STOCK: The Environmental Defense Fund has completed [an analysis](#) of the Senate's proposed EPA and Interior spending package that it deems "a quiet assault" on public health and the environment. Of particular concern are provisions in the chairman's mark that would eliminate the Integrated Risk Information System, a chemical safety program, and significant cuts to enforcement and various Clean Air Act programs. "The White House, House and Senate budget cuts all would require EPA to continue to lay off public health experts, scientists, environmental engineers as well as staff that manage grants to state and local communities," EDF notes.

MAIL CALL! TIME'S OF THE ESSENCE! A bipartisan group of 11 senators sent [a letter](#) to the Army Corps of Engineers expressing serious concerns about potential delays in completing an action-plan for keeping Asian carp from reaching the Great Lakes. "It is imperative that the [Army Corps] meet the original timeline for completing the Chief's Report by January 2019," the letter, led by [Debbie Stabenow](#) and [Rob Portman](#), wrote. "This timeline is particularly concerning given recent findings that demonstrated new ways for Asian carp to enter the Great Lakes."

Whitefish probes continues: Sen. [Claire McCaskill](#), ranking member on the Homeland Security Committee, sent [a letter](#) Monday seeking a briefing on what, if any, role FEMA played in reviewing a draft contract from Whitefish Energy from grid repair work in Puerto Rico. "Recently released documents appear to indicate that FEMA attorneys in the local office and at headquarters reviewed versions of the draft contract by PREPA and Whitefish," she wrote.

SOLAR CAPACITY'S BIG YEAR: Bloomberg New Energy Finance is out with [new research](#) finding 34 gigawatts of new solar-power generating capacity came online in 71 emerging market countries last year. China, at 27 gigawatts, accounted for the bulk of the new capacity, but India, Brazil, Chile, Jordan, Mexico and Pakistan all reported strong installations as well.

NRDC HITS COMSTOCK: The Natural Resources Defense Council is out with a six-figure ad on television and social media urging Rep. [Barbara Comstock](#) to oppose the finished version of congressional tax legislation. The Virginia Republican backed the House-passed version [H.R. 1 \(115\)](#) previously. Watch it [here](#).

HEADS UP: The Center for Climate and Energy Solutions and The Climate Registry will today announce Bloomberg Philanthropies as the replacement sponsor for their [Climate Leadership Conference](#) to be held next February in Denver. It'll fill the void left after EPA pulled out of sponsorship earlier this year.

NOW PRESENTING: New DOE Assistant Secretary for Fossil Energy Steve Winberg makes

his first public appearance since confirmation this morning as the Global CCS Institute releases its annual report on the status of carbon capture and sequestration technologies. Watch [here](#).

TAKE A GLANCE! The Competitive Enterprise Institute is out with a paper today backing Pruitt's pledge red team - blue team climate science debate. Read [here](#).

BIG PENALTY IN STORE: Fines stemming from the emissions cheating scandal may cost Fiat Chrysler up to €9.6 billion in France, POLITICO Europe's Sara Stefanini [reports](#), citing [documents](#) posted by Le Monde.

LIGHTER CLICK: Beatles legend Paul McCartney [tweeted](#) his support for climate action and NRDC on Monday. "Climate change is a real issue and no effort is too small when it comes to protecting and preserving our planet," he wrote.

MOVER, SHAKER: Melisa Klem has left her position as executive director of the Society of Environmental Journalists. The organization will immediately launch a search for a replacement.

QUICK HITS

— Environmentalists sue Forest Service to overturn Rosemont Mine approval. [Arizona Daily Star](#).

— Wind Power Capacity Moves Past Coal in Texas. [AP](#).

— U.S. oil falls on Keystone restart, doubts about Russia's resolve. [Reuters](#).

— Stakes Are High for Solar Power as Puerto Rico Rebuilds. [WNYC](#).

— Everglades oil well application rejected. [Sun-Sentinel](#).

— Venezuela's military is reportedly taking over the country's state oil giant. [CNBC](#).

HAPPENING TODAY

9:30 a.m. — "[Status of Carbon Capture 2017](#)," Center for Strategic and International Studies, 1616 Rhode Island Avenue, NW

10:00 a.m. — Senate Environment and Public Works Committee holds a nomination [hearing](#), Dirksen 406

10:00 a.m. — "[Security and climate change in the Pacific: from Asia to the US](#)," International Institute for Strategic Studies, 2121 K Street NW, Suite 801

12:00 p.m. — "[Green Tyranny: Exposing the Totalitarian Roots of the Climate Industrial Complex](#)," Heritage Foundation, Lehrman Auditorium, 214 Massachusetts Ave NE

1:30 p.m. — "[Energy and Development: Providing Access and Growth](#)," Center for Strategic and International Studies, 1616 Rhode Island Avenue, NW

2:00 p.m. — "[Can tax reform include a carbon tax?](#)" Brookings Foundation, 1775 Massachusetts Ave. NW

4:30 p.m. — "[Oil's Coming Decade of Disorder](#)," Securing America's Future Energy, 918 F St. NW

5:00 p.m. — House Rules Committee meets to consider two bills, including one reauthorizing the Brownfields program, H-313

THAT'S ALL FOR ME!

To view online:

<https://www.politicopro.com/newsletters/morning-energy/2017/11/clean-power-plan-fever-takes-hold-today-in-west-virginia-033969>

Stories from POLITICO Pro

TransCanada asks Nebraska regulators to reconsider Keystone XL route decision [Back](#)

By Ben Lefebvre | 11/27/2017 04:24 PM EDT

TransCanada asked Nebraska regulators to reconsider their decision approving an alternate route through the state for the Keystone XL pipeline, according to a new filing.

The company's motion to reconsider, filed Friday, is an effort to get the Nebraska Public Service Commission to "to address some questions that were raised by" its Nov. 20 approval of a new path for the pipeline that differed from TransCanada's preferred route, according to company spokesman Terry Cunha. "It is not an attempt by TransCanada to have the PSC alter its approval of the Alternative Mainline route," he said.

TransCanada asked the PSC to "consider Keystone's filing of an amended application in accordance with the findings of the Commission that the Mainline Alternative Route is in the public interest," according to the filing. Nebraska landowners filed their own motion on Saturday demanding the PSC hold oral arguments on TransCanada's request, saying the company sought to file a new application "because it realizes there was no mechanism to approve the Mainline Alternative Route as occurred." Both motions were posted online today.

TransCanada has not made a final decision on whether to build the pipeline and is continuing to study the implications of the PSC's decision. Project opponents say the company will need to secure new permits from the federal government if it decides to build along the new route.

WHAT'S NEXT: The landowners said Nebraska state law requires the PSC to schedule oral arguments on TransCanada's motion.

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Federal workers turn to encryption to thwart Trump [Back](#)

By Andrew Restuccia, Marianne LeVine and Nahal Toosi | 02/02/2017 05:07 AM EDT

Federal employees worried that President Donald Trump will gut their agencies are creating new email addresses, signing up for encrypted messaging apps and looking for other, protected ways to push back against the new administration's agenda.

Whether inside the Environmental Protection Agency, within the Foreign Service, on the edges of the Labor Department or beyond, employees are using new technology as well as more old-fashioned approaches — such as private face-to-face meetings — to organize letters, talk strategy, or contact media outlets and other groups to express their dissent.

The goal is to get their message across while not violating any rules covering workplace communications, which can be monitored by the government and could potentially get them fired.

At the EPA, a small group of career employees — numbering less than a dozen so far — are using an encrypted messaging app to discuss what to do if Trump's political appointees undermine their agency's mission to protect public health and the environment, flout the law, or delete valuable scientific data that the agency has been collecting for years, sources told POLITICO.

Fearing for their jobs, the employees began communicating incognito using the app Signal shortly after Trump's inauguration. Signal, like WhatsApp and other mobile phone software, encrypts all communications, making it more difficult for hackers to gain access to them.

One EPA employee even got a new, more secure cellphone, and another joked about getting a "burner phone."

"I have no idea where this is going to go. I think we're all just taking it one day at a time and respond in a way that seems appropriate and right," said one of the EPA employees involved in the clandestine effort, who, like others quoted in this story, was granted anonymity to talk about the sensitive discussions.

The employee added that the goal is to "create a network across the agency" of people who will raise red flags if Trump's appointees do anything unlawful.

The White House did not immediately respond to a request for comment.

While many workers across the federal government are still in wait-and-see mode, the first two weeks of the Trump administration — with its flurry of executive orders that have in some cases upended lives — have sent a sobering message to others who believe they must act now.

In recent days, career employees at the State Department gathered nearly 1,000 signatures for what's known as a "Dissent Channel" memo, in which they express their anger over a Trump executive order that bars immigrants from seven Muslim-majority countries and halts refugee admissions to the country. The number of signatures was extraordinarily high, even though the letter was submitted after White House spokesman Sean Spicer essentially warned the dissenting diplomats they were risking their jobs.

The executive order on immigration and refugees caused widespread panic at airports, spurring protests and outrage around the world.

It also led to what has been the most high-profile act of defiance yet from a Trump administration official: Acting Attorney General Sally Yates on Monday ordered the Department of Justice's lawyers not to defend the order in court. Yates was fired that same night.

Current and former employees of the Labor Department, meanwhile, are using their private email accounts to send around a link to a letter asking senators to oppose the nomination of Andrew Puzder for secretary of their agency. The employees may sign on to the letter using Google Docs. The letter will not be submitted to the Senate HELP Committee, and the signatures will not be made public, unless 200 current employees sign on.

A federal worker familiar with the letter's circulation said that it's being signed by hundreds of current and former DOL employees.

According to a [draft of the letter](#) obtained by POLITICO, the employees write that they have "serious concerns" about the fast-food magnate's willingness to protect the rights of workers given some of his past comments and actions.

The draft of the letter criticizes Puzder's comments about women, and cites his restaurants' advertisements, some of which feature women in bikinis eating burgers. Puzder has defended the ads.

"One of us once heard a colleague ask, quite seriously, whether it would violate workplace rules of civility and prohibitions against sexual harassment to view Mr. Puzder's ads on a government computer," the letter says. "We think the question is a good one."

The federal employees interviewed for this story stressed that they see themselves as nonpartisan stewards of the government. But several also said they believe they have a duty to speak out if they feel a policy is undermining their mission.

Drafts of the Dissent Channel memo signed by the State Department employees insist, for instance, that instead of protecting U.S. national security through his new executive order on refugees and immigrants, Trump is endangering the United States by bolstering the terrorists'

narrative that the West hates Muslims.

"I think we all have to look within ourselves and say 'Where is that line that I will not cross?'"
one Foreign Service officer said.

Since Trump was elected in November, many State Department employees have also met quietly for other reasons. Groups of Muslims who work at Foggy Bottom, for instance, have held meetings to discuss fears that they could be subject to witch hunts and see their careers stall under the new administration. A few of Trump's top aides have spoken out against radical Islamism in such harsh terms that some Muslims believe the aides are opposed to the religion of Islam as a whole.

Steven Aftergood, who directs the Project on Government Secrecy at the Federation of American Scientists, indicated that it's too soon to say whether there's a broad trend of bureaucratic resistance to Trump taking hold.

"Quite a few federal employees seem to be looking for constructive ways to express discontent," he said. "Meanwhile, tension is still growing, not subsiding."

EPA employees are uniquely concerned about their future, having faced barbs from Trump advisers who have toyed with cutting the agency's staff by two-thirds and from other Republicans who want to eliminate the agency altogether. So career staffers are discussing the best way to alert the public to what's happening behind the scenes.

"I'm suddenly spending my days comparing the importance of the oath I took when I started my career service and the code that I have as an American," an EPA employee said.

EPA employees have started reaching out to former Obama administration political appointees, who they hope will help them spread the word about any possible improper conduct at the agency.

"It's probably much safer to have those folks act as the conduit and to act as the gathering point rather than somebody in the agency," the employee said. "You're putting your career and your livelihood and your paycheck at risk every time you talk to somebody."

Organizations such as the Government Accountability Project, which advocates for whistleblowers, have been busy as federal employees fret about what their new bosses may ask them to do.

"We've had a significant number of federal employees who have contacted us in recent weeks," said Louis Clark, the nonprofit's CEO. "It has to be the largest influx of people trying to reach us that we've seen."

The largest group of callers? "The people who want to know what to do if they're asked to violate the law," Clark said.

Jeff Ruch, executive director of Public Employees for Environmental Responsibility, said EPA employees are in perhaps the "deepest pit of despair" among his group's membership.

He said his group has been fielding calls on everything from what triggers a reduction in the federal workforce to how long they can carry health insurance benefits if they are pushed out.

Asked how EPA employees are feeling, Ruch said, "In the broadest sense, scared and depressed."

Rachael Bade contributed to this report.

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Supreme Court divided over patent review process [Back](#)

By Sarah Karlin-Smith | 11/27/2017 04:36 PM EDT

In a case with major implications for the tech and drug industries, Supreme Court justices appeared divided Monday along partisan lines on the constitutionality of the Patent and Trademark Office's system for handling patent challenges outside the courts.

Liberal justices during oral arguments appeared to favor keeping the agency's process, known as inter partes review, while conservative justices expressed concern with the process.

The case, *Oil States Energy Services v. Greene's Energy Group*, focuses on two rival oil companies. Oil States Energy Services argued that the IPR process is unconstitutional because patents are private property that can only be taken away through the court system.

The tech industry has a lot riding on the case. Tech companies say the the USPTO review process — created under the 2011 America Invents Act — is a crucial tool for weeding out bad patents that often fall into the hands of "patent trolls," which exist simply to extract licensing fees from businesses.

Generic drug companies and health insurers also say the system, which is widely viewed as a less expensive option than challenging patents in the courts, helps ensure that cheaper versions of medicines reach patients sooner.

But the brand drug industry says the reviews unconstitutionally allow their private property rights to be taken away without going through the legal process. Further, drugmakers say IPR creates uncertainty in the patent system, discouraging biotech companies from making investments in new products.

Some justices noted there is precedent for government agencies to adjudicate matters of private

property and to alter the terms of a grant of property.

"I thought it's the most common thing in the world that agencies decide all kinds of matters through adjudicatory-type procedures often involving private parties," Justice Stephen Breyer said.

Breyer and Justice Elena Kagan expressed concern that if the court finds IPR unconstitutional, then the work of a number of federal agencies handling disputes — including the FCC or the National Labor Relations Board — may also be considered unconstitutional.

While conservative justices suggested Congress and executive agencies have some ability to alter the terms of the patent process and patent rights, they raised concerns about how IPR functions.

Chief Justice John Roberts said the head of the PTO has too much power to decide who can sit on IPR panels and can even change panel assignments mid-review. And he appeared troubled by the fact that the IPR process could be used to take away patents that were granted before Congress created the review process.

Breyer questioned whether the PTO should be able to re-examine patents at any time, particularly those that have existed for years and resulted in billions of dollars of company investment.

Some justices who appeared to favor the IPR process pointed out that final decisions could be appealed to the U.S. Court of Appeals for the Federal Circuit.

"To me what saves this is, is even a patent invalidity finding can be appealed to a court," Justice Sonia Sotomayor said.

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Court denies EPA bid to relocate TSCA lawsuit [Back](#)

By Alex Guillén | 11/27/2017 03:24 PM EDT

The 9th Circuit Court of Appeals today denied EPA's request to transfer to another court a lawsuit over one of the agency's implementation rules under the reformed Toxic Substances Control Act.

Three lawsuits over the prioritization rule, which established how EPA will determine which chemicals to study first, were consolidated in September in the 9th Circuit. Meanwhile challenges to the evaluation rule, which governs how EPA will study each chemical, were moved to the 4th Circuit Court of Appeals.

The Trump administration and the environmental groups challenging those rules each tried to have both transferred to the same court. EPA asked for the prioritization rule suits to be moved to the 4th Circuit, while green groups asked for the evaluation rule to be moved to the 9th Circuit.

The 9th Circuit's denial means that the prioritization rule lawsuits will remain there. The order, which did not include an explanation, was issued by Judges Wallace Tashima, William Fletcher and Richard Tallman, all Clinton appointees. The judges ordered opening briefs be filed by Jan. 23.

WHAT'S NEXT: The 4th Circuit last week said it would wait to decide its path forward until the 9th Circuit had ruled. The 4th Circuit could choose to transfer its evaluation rule lawsuit to the 9th Circuit or instead to keep it.

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