# **ARTICLE: The Trump Effect on Power Plant Carbon Dioxide Emissions**

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**Text**

**[\*152]**I. INTRODUCTION

The election of Donald J. Trump came as a shock to many environmental activists. Trump led an anti-Washington campaign that made it clear he had little use for environmental regulation. He promised to audiences of Appalachian miners and Rust Belt power plant employees that he would get rid of "regulations that shut down hundreds of coal-fired power plants and block the construction of new ones." [[1]](#footnote-2)1Environmental groups were concerned that President Trump would reverse the progress made during the previous eight years toward achieving the environmental goals of the nation and of the world. In particular, they worried that the Trump Administration would divert the country away from its commitments under the Copenhagen Accord to cut GHG emissions by 17 percent from 2005 levels by 2020 and under a separate agreement with China to cut GHG emissions to 26-28 percent below 2005 levels by 2025. Additionally at stake was the Paris Agreement, which specified the global temperature increase resulting from human activities to well below two degrees Celsius above pre-industrial levels. [[2]](#footnote-3)2Protective regulations at risk of replacement **[\*153]**included the Obama Administration's Clean Power Plan (CPP), its new source performance standards (NSPS) for greenhouse gas (GHG) emissions from new and modified power plants, and the "endangerment finding" that was a condition precedent to those regulations and additional requirements for new and modified power plants. Overall, environmental groups feared that a Trump Administration EPA would repeal these commitments and protective regulations, and replace them with tepid rules that would reverse the electric power industry's impressive progress in reducing carbon dioxide (CO2) emissions during the previous five years.

Many close observers of the political realm predict that President Trump and his political appointees will not be able to reverse the decline in emissions in the electric power industry because the owners of the heaviest emitting coal-fired power plants have retired many "big dirties" and are committed to retiring many more in the next few years. Also, building new coal-fired plants has ceased and only a few natural gas-fired plants are on the horizon because of low demand for electricity, local demand response programs, and distributed generation. In addition, the proportion of electricity demand supplied by renewable resources is rising due to consumer demand for "clean" power, and heavy utility company investments in utility-scale wind farms and solar arrays. Finally, many cities and states are pressing forward with renewable portfolio standards and their own GHG emissions reduction programs irrespective of the Trump administration's regulatory activities. This Article will probe the legal, technological and economic underpinnings the Trump Administration initiatives and the viewpoint that their initiatives will have little impact on CO2 emissions from power plants. Part II will highlight the Trump Administration's views on the extent to which human activities are the leading contributing factor. Part III will describe the radical change in direction that that the Trump Administration is taking with respect to regulations designed to reduce GHG emissions from power plants. Part IV will offer predictions about the likely effect of the Trump Administration's rollbacks on the electric power and coal industries, on jobs in those industries, and on the natural gas and renewables industries. Finally, Part V will offer concluding thoughts about the state of power plants and their projected CO2 emissions.

**[\*154]**II. DONALD TRUMP'S VARIABLE VIEWS ON CLIMATE DISRUPTION

Donald Trump's pre-election utterances on climate change evidenced a disbelief in climate change. In 2012, Trump famously tweeted that "global warming was created by and for the Chinese in order to make U.S. manufacturing non-competitive." [[3]](#footnote-4)3In 2015, he told a conservative talk show audience that he was "not a believer in man-made global warming." [[4]](#footnote-5)4On the campaign trail, Trump promised to reverse Obama Administration environmental policies, including EPA's highly controversial CPP for reducing CO2 emissions from existing coal-fired power plants, which he called "stupid" and "job killing." [[5]](#footnote-6)5 [[6]](#footnote-7)6At the same time, he promised to "save that coal industry." [[7]](#footnote-8)7Soon after the election, however, President-elect Trump told Fox News that he was "still open-minded" about whether human activities caused climate disruption and added that, "nobody really knows." [[8]](#footnote-9)8

The clearest indication of where Trump now stands on climate disruption is his decision to withdraw from the Paris Agreement, which committed the U.S. to reducing the nation's GHG emissions by 26 to 28 percent by 2025. [[9]](#footnote-10)9Initially, the administration was divided on whether the United States should withdraw from the Paris Agreement, with EPA Administrator Scott Pruitt, Vice President Mike Pence, Attorney General Jeff Sessions and presidential counselor Steve Bannon strongly in favor of withdrawal. [[10]](#footnote-11)10 **[\*155]**However, Secretary of State Rex Tillerson, Secretary of Commerce Gary Cohn, presidential advisor Ivanka Trump, and Energy Secretary Rick Perry wanted to renegotiate the Paris Agreement's terms. [[11]](#footnote-12)11According to one source, the battles within the administration over the withdrawal issue were "dirty and rough." [[12]](#footnote-13)12While Bannon fired up the conservative base, Pruitt persuaded the National Mining Association to come out against the pact, launching a national media campaign that asserted the Paris Agreement was "a bad deal for our country." Pruitt also assisted several Republican senators in drafting a letter to Trump, urging him to withdraw. [[13]](#footnote-14)13On the other hand, Ivanka Trump persuaded leaders of corporate America to sponsor a full-page advertisement in the *Wall Street Journal* urging Trump to remain in the agreement. [[14]](#footnote-15)14In response, coal baron Robert Murray, who had been a large financial contributor to the Trump campaign, pointed out that "[t]hose in your administration advising you to stay in this fraudulent agreement were not elected; you were." [[15]](#footnote-16)15Environmental groups also weighed in by running ads on cable news programs that Trump reportedly watched on a daily basis urging him to remain in the Paris Agreement. [[16]](#footnote-17)16In the end, however, the pro-withdrawal faction won out.

President Trump delivered a Rose Garden speech with Bannon, Pruitt and the Competitive Enterprise Institute's Myron Ebel standing in the background, [[17]](#footnote-18)17announcing that the United States would "cease all implementation of the nonbinding Paris accord." [[18]](#footnote-19)18Trump called the **[\*156]**Paris Agreement "simply the latest example of Washington entering into an agreement that disadvantages the United States, to the exclusive benefit of other countries, leaving American workers . . . and taxpayers to absorb the cost in terms of lost jobs, lower wages, shuttered factories and vastly diminished economic production." [[19]](#footnote-20)19He also claimed that the Paris Agreement "effectively block[ed] the development of clean coal in America, and that he was elected to represent the citizens of Pittsburgh, not Paris." [[20]](#footnote-21)20

Although it will take four years to accomplish the withdrawal as a formal matter, [[21]](#footnote-22)21it played very well with Trump's electoral base. [[22]](#footnote-23)22The president of the Tea Party Patriots opined that the Paris Agreement was "a drag on our economy and a bad deal for American workers." [[23]](#footnote-24)23Trump's withdrawal made it clear that on issues of great importance to the base, Trump's economic advisors and even his daughter had little influence. [[24]](#footnote-25)24In the time since Trump's withdrawal, environmental groups, electricity-consuming companies, and many other officials have criticized his decision. [[25]](#footnote-26)25For instance, Bill McKibben, a climate activist, declared that the withdrawal amounted to "a thorough repudiation of two of the civilizing forces on our planet: diplomacy and science." [[26]](#footnote-27)26The mayor of Pittsburgh, the city Trump alluded to in his speech, assured residents that the city would continue to "follow the guidelines of the Paris Agreement for our people, our economy **[\*157]**& future." [[27]](#footnote-28)27And the, chancellor of the University of Pittsburgh, chastised Trump for failing to see that the city was no longer dependent on coal and had moved on to become "home to one of the most vibrant technology and health care markets in the country." [[28]](#footnote-29)28

The American public also disfavored Trump's decision to withdraw from the Paris Agreement. A Washington Post-ABC poll found that 59 percent of respondents opposed the withdrawal while only 28 percent supported it. However, 67 percent of Republicans supported it compared to 82 percent of Democrats who opposed it. [[29]](#footnote-30)29Despite the public's wide disagreement, the action has no immediate domestic impacts. In the future, it could indirectly help the coal industry and coal dependent power companies, but it could also adversely affect the coal industry if other signatories to the Paris Agreement erect tariffs against imports of coal in response to the U.S. action. [[30]](#footnote-31)30

III. A RADICAL CHANGE IN DIRECTION

*A. Political Appointments*

Scott Pruitt, President Trump's EPA Administrator, was a fierce critic of the EPA. As Oklahoma's attorney general, he had filed legal challenges to the Obama EPA's regulations. Pruitt shared President Trump's view that the EPA's "out-of-control energy agenda [had] destroyed millions of jobs." [[31]](#footnote-32)31Pruitt had also been the chairman of the Rule of Law Defense Fund, an offshoot of the Republican Attorneys General Association that was funded by Freedom Partners, which was in turn funded by ***oil*** **[\*158]**billionaires Charles and David Koch and their circle of wealthy conservative benefactors. [[32]](#footnote-33)32He also raised money from the ***oil*** and gas and coal industries for a super PAC called "Liberty 2.0." [[33]](#footnote-34)33After being elected attorney general in 2011, Pruitt disbanded the department's environmental enforcement division. [[34]](#footnote-35)34In its place, he established a new "federalism" unit that eventually brought 14 lawsuits against EPA, focusing particularly on regulations that affected the energy industry. [[35]](#footnote-36)35The press later reported that he signed several letters to federal officials on his Attorney General letterhead that were drafted by attorneys for Devon Energy, a large Oklahoma natural gas company. [[36]](#footnote-37)36

Representing Oklahoma consumers before the Oklahoma Corporation Commission, Pruitt supported Oklahoma Gas and Electric's (OG&E) application to recover the cost of installing scrubbers at its coal-fired plants to comply with EPA's regional haze regulations over the objections of environmental groups who wanted the company to retire the plants. But he opposed the application of Public Service of Oklahoma (PSO) to recover the cost of implementing a settlement with EPA under which it retired one coal-fired plant, rather than install pollution controls, and purchased renewable power to replace the lost capacity. [[37]](#footnote-38)37The difference was that OG&E stuck with the Attorney General in his challenge to EPA's regional haze plan while PSO abandoned the challenge upon entering into the settlement agreement with EPA. [[38]](#footnote-39)38Pruitt's critics claimed that he had become so committed to his lawsuit against EPA that he was willing to allow OG&E to saddle consumers with the cost of expensive scrubbers to keep a 37-year-old coal-fired unit running. [[39]](#footnote-40)39

**[\*159]**Environmental groups strongly opposed the appointment. [[40]](#footnote-41)40With the financial assistance of hedge fund billionaire Tom Steyer, they ran television advertisements 1642 times in seven states pointing out that Pruitt had received campaign contributions totaling more than $ 300,000 from ***oil*** and coal companies and the Koch brothers. [[41]](#footnote-42)41The National Association of Manufacturers responded with an ad campaign supporting Pruitt's nomination. [[42]](#footnote-43)42

At his confirmation hearings, Pruitt said that he did not "believe climate change is a hoax." [[43]](#footnote-44)43It was instead a topic "subject to continuing debate and dialogue." [[44]](#footnote-45)44In a March 2017 television interview, however, Pruitt said that he did not think that anthropogenic GHG emissions were "a primary contributor to the global warming that we see." [[45]](#footnote-46)45He concluded that "we need to continue the debate and continue the review and analysis." [[46]](#footnote-47)46In a carefully written response to the Senate Environment and Public Works Committee, Pruitt stated that "[t]he climate is changing and human activity impacts our changing climate in some manner," but "[t]he ability to measure with precision the degree and extent of that impact, and what to do about it, are subject to continuing debate and dialogue." [[47]](#footnote-48)47Soon after he was confirmed, **[\*160]**Pruitt announced at the Conservative Political Action Conference that the Clean Power Plan was among the regulations "that in the near term need to be rolled back in a very aggressive way." [[48]](#footnote-49)48Fearing violent retaliation from environmental activists, Pruitt demanded 24/7 protection from bodyguards pulled from the agency's enforcement office. [[49]](#footnote-50)49

President Trump belatedly nominated Andrew Wheeler to be the agency's Deputy Administrator. [[50]](#footnote-51)50A former chief counsel to the Senate Committee on Environment and Public Works under Chairman James Inhofe (ROklahoma), Wheeler had spent the past eight years as a lobbyist for the electric power industry and Murray Energy company, one of the most aggressive critics of EPA regulation of fossil fuel-fired power plants. [[51]](#footnote-52)51The Competitive Enterprise Institute strongly supported Wheeler's appointment, but some environmental groups found the nomination to be "absolutely horrifying." [[52]](#footnote-53)52To head the Office of Air and Radiation, Trump appointed Bill Wehrum, an attorney who represented the American Petroleum Institute. [[53]](#footnote-54)53After being nominated, Wehrum told the press that he did not believe that Congress had given EPA authority to regulate GHG emissions. [[54]](#footnote-55)54

President Trump appointed former Texas governor Rick Perry to be his Secretary of Energy. [[55]](#footnote-56)55Perry's acceptance of the position was ironic because he had advocated abolishing the department when he ran for president in 2012. [[56]](#footnote-57)56A graduate of Texas A&M University with an undergraduate degree in animal science, Perry had most recently been a contestant on "Dancing With the Stars." [[57]](#footnote-58)57As a candidate in the 2016 presidential primaries, he had referred to Donald Trump as "a barking carnival act," but he later campaigned **[\*161]**for Trump in the general election. [[58]](#footnote-59)58As governor, Perry strongly opposed EPA's efforts to regulate GHG emissions, and in 2005 he issued an executive order to speed up permitting of 18 new coal-fired power plants, 15 of which were ultimately cancelled after environmental groups challenged them. [[59]](#footnote-60)59But he also supported a massive publicly funded build-out of transmission lines to West Texas called the "Competitive Renewable Energy Zone" to enable wind power to reach major metropolitan areas in the state. [[60]](#footnote-61)60In his 2010 book, Perry referred to the scientific consensus that human activities caused global warming as a "contrived phony mess." [[61]](#footnote-62)61By the time of his confirmation, however, he testified that "it's not settled science," and he did not "mind being skeptical about things." [[62]](#footnote-63)62

A representative of the coal and electric power industry praised the nomination as "a good pick." [[63]](#footnote-64)63Pointing out that Perry had been a beneficiary of large campaign contributions from energy companies and their executives, environmental groups opposed the nomination, calling Perry "completely unfit to run an agency he sought to eliminate." [[64]](#footnote-65)64

*B. Concerns for Scientific Integrity During the Transition*

Fearing that the incoming administration would remove valuable information on climate change from the agency websites, scientists and database experts **[\*162]**spent the two months between the election and the inauguration preserving that information on separate websites to make it available to the public in the future. [[65]](#footnote-66)65They were outraged that the Trump transition team at the Department of Energy had requested the names of agency employees who had participated in international climate discussions and worked on the science underlying EPA climate disruption regulations. [[66]](#footnote-67)66Although the request was later withdrawn, [[67]](#footnote-68)67climate scientists were concerned that the incoming administration would attempt to deter government scientists from their research and undermine the consensus in the scientific community that human activities contributed to climate disruption. [[68]](#footnote-69)68

*C. Scrubbing Agency Websites*

The fears were well-founded. Within hours of the inauguration, all mention of climate change and government attempts to deal with it was removed from the White House website. [[69]](#footnote-70)69At the same time, incoming officials made verbal requests to EPA web managers to take down pages on the agency's website devoted to climate change, but they backed off when the career employees demanded that they put their requests in writing. [[70]](#footnote-71)70Within weeks, however, EPA's website experienced subtle changes, such as the disappearance of references to President Obama's Climate Action **[\*163]**Plan. [[71]](#footnote-72)71In late April 2017, EPA removed several pages containing descriptions of climate disruption and climate-related scientific data. [[72]](#footnote-73)72Former Administrator, Gina McCarthy called it a "wholesale wiping out of the historical record of what this agency has been doing with public dollars for decades, not just the past eight years." [[73]](#footnote-74)73In May, the agency removed the climate change link from the "Effects of Air Pollution" section on EPA's list of "Environmental Topics." [[74]](#footnote-75)74In September 2017, EPA amended the website for an industry-government program to enhance truck efficiency to replace words like "climate change" and "greenhouse gas emissions" with words like "sustainability" and "pollution." [[75]](#footnote-76)75In October, the agency removed pages detailing approaches for mitigating and adapting to climate change from its webpage offering resources for state and local government. [[76]](#footnote-77)76Similarly, the National Institutes for Environmental Health Sciences removed several pages on the relationship between climate change and adverse public health effects from its website. [[77]](#footnote-78)77Pie charts on the Department of Energy's website showing the link between coal and GHG emissions were quietly removed. [[78]](#footnote-79)78The Department also removed the words "clean energy" from many of its pages and deleted the **[\*164]**word "Clean" from its Clean Energy Investment Center. [[79]](#footnote-80)79And in June 2017, it revamped its website to emphasize fossil fuels over renewables. [[80]](#footnote-81)80

*D. Executive Order on Promoting Energy Independence and Economic Growth. E.O. 13783*

On March 28, 2017, President Trump signed an executive order on "Promoting Energy Independence and Economic Growth" that makes the new administration's priorities crystal clear. The order requires all departments and agencies to review existing regulations, orders, guidance documents, and other policy instruments "that potentially burden the development and use of domestically produced energy resources, with particular attention to ***oil***, natural gas, coal, and nuclear energy resources." [[81]](#footnote-82)81As soon as practicable, the agencies and departments have to "suspend, revise, or rescind" those actions that unnecessarily burden the development and use of domestically produced energy resources. The president ordered EPA Administrator Pruitt to "immediately take all steps necessary to review and as soon as practicable suspend, revise or rescind" the CPP for CO2 emissions from existing fossil fuel-fired power plants, the model trading rules for states to use in implementing the CPP, and the NSPS for power plants that specified emissions limitations for new and modified fossil fuel-fired power plants. [[82]](#footnote-83)82Finally, the order suggests that the Attorney General provide notice of the executive order and any EPA action taken pursuant to it to the D.C. Circuit, which was reviewing those rules, and request stays pending the completion of EPA's reviews. [[83]](#footnote-84)83

In issuing the Executive Order, President Trump was apparently playing to his Republican base. A February 2017 poll revealed that only 25 percent of Trump voters believed that anthropogenic GHG emissions were causing global warming. [[84]](#footnote-85)84But the climate-change-denying base was only a small minority of American public. In the same poll, 65 percent of all voters believed that GHG emissions caused global warming. [[85]](#footnote-86)85A March 2017 Gallup poll found that 68 percent of respondents believed that climate change was driven by human activities (the highest percentage of any Gallup poll), **[\*165]**and only 29 percent attributed it to natural causes. [[86]](#footnote-87)86An April 2017 Quinnipiac poll of more than 1000 voters found that 65 percent believed that climate change was caused by human activities. [[87]](#footnote-88)87And a large poll of more than 1200 adults conducted by the Yale Program on Climate Change Communication and the George Mason University Center for Climate Change Communication in April 2017 found that 70 percent of respondents thought climate change was happening and that 58 percent thought that it was mostly caused by humans. [[88]](#footnote-89)88

As we learned in the 2016 election, however, public opinion polls do not necessarily predict how voters perform at the polls. Issues other than climate disruption may motivate people to vote for a climate change denying candidate. Thus, while the Trump Administration's attempts to turn back the clock on climate disruption probably delighted his base, it may not cost him many votes among Republicans who believe in human-caused climate change or among independent voters who tend to vote Republican for other reasons.

*E. Pulling Back the Clean Power Plan*

EPA got right to work on implementing the executive order. Had it gone into effect in a timely fashion, the CPP might have been the most significant environmental regulation promulgated under the Clean Air Act. The highly complex final rule flowed from a series of steps that the agency took during the Obama administration in response to the Supreme Court's landmark holding in *Massachusetts v. EPA*. In that case, the Court held that GHGs, including carbon dioxide (CO2), were "pollutants" under **[\*166]**the Clean Air Act. [[89]](#footnote-90)89In December 2009, EPA published a formal finding that greenhouse gas emissions "endangered" human health and the environment, [[90]](#footnote-91)90and the D.C. Circuit upheld that finding in June 2012. [[91]](#footnote-92)91With the publication of the finding, EPA Administrator Lisa Jackson announced that the agency was "now authorized and obligated to make reasonable efforts to reduce greenhouse gas pollutants under the Clean Air Act." [[92]](#footnote-93)92Among other things, the finding triggered the obligation of EPA and state agencies administering EPA's prevention of significant deterioration (PSD) program to consider GHG emissions in issuing permits for new and modified major stationary sources. [[93]](#footnote-94)93After the Supreme Court rejected EPA's ill-conceived "tailoring rule," [[94]](#footnote-95)94EPA and state permitting agencies were left with the obligation to factor GHG emissions into their "best available control technology" (BACT) determinations for all new and modified power plants that emitted more than 100 tons per year of sulfur dioxide (SO2), oxides of nitrogen (NOx) or particulate matter (PM) or more than 75,000 tons per year of CO2. [[95]](#footnote-96)95

The next step for EPA was to promulgate an NSPS for new and modified power plants that addressed GHG emissions. In August 2015, EPA promulgated standards for all new and modified fossil fuel-fired electricity generating units ("EGUs"). [[96]](#footnote-97)96As a practical matter, the standards established a floor for BACT determinations for new and modified plants in the PSD program. [[97]](#footnote-98)97Having established a NSPS for new sources, the agency had an obligation **[\*167]**under section 111(d) of the statute to promulgate guidance for state plans addressing GHG emissions from existing fossil fuel-fired power plants. [[98]](#footnote-99)98At the same time that it finalized the NSPS, the agency finalized guidelines for existing sources. [[99]](#footnote-100)99

The so-called Clean Power Plan for existing sources covered both coal-and gas-fired electricity generating units (EGUs) and states containing such units in the continental United States other than Vermont and D.C., which lacked such units. [[100]](#footnote-101)100The regulations had three main elements. First, they set out CO2 emission performance rates for coal-fired steam generating units and gas-fired combustion turbines reflecting the agency's determination of the "best system of emissions reduction" (BSER) that had been "adequately demonstrated" for those two subcategories. The regulations phased in the performance rates over the years 2022 through 2030. Second, the regulations specified CO2 emissions goals for each state expressed as both emission rates and as total mass based on each state's mix of affected EGUs and the two performance rates. Finally, they provided guidelines for the affected states to use in developing and submitting for EPA approval state plans implementing the emission performance rates "either through emission standards for affected EGUs, or through measures that achieve the equivalent, in aggregate, of those rates as defined and expressed in the form of the state goals." [[101]](#footnote-102)101In other words, a state could meet its rate-based goal by imposing technology-based emissions limitations on individual electricity generating units or meet its mass-based goal by establishing an acceptable cap-and-trade program.

The affected states have until September 2018 to submit their plans, after which EPA has a year to review them. The plans can require generating units to begin making reductions by as late as 2022 so long as they met the final goals by 2030. [[102]](#footnote-103)102The plan also created a Clean Energy Incentive Program (CEIP) that allowed states to award allowances (for cap-and-trade regimes) and "emission rate credits" (for rate-based requirements) to "qualified providers" that made early investments in renewable energy or implemented demand-side energy efficiency programs in low-income **[\*168]**communities. [[103]](#footnote-104)103The allowances and credits, however, were capped at 300 million tons of CO2 emissions nationwide. [[104]](#footnote-105)104The preamble to the regulations put off for another day the agency's explanation of how the CEIP would operate in the real world. [[105]](#footnote-106)105EPA predicted that the regulations would reduce CO2 emissions from the electric power sector by 22 to 23 percent below 2005 levels in 2020, 28 to 29 percent below 2005 levels in 2025, and 32 percent below 2005 levels in 2030. [[106]](#footnote-107)106

*1. Requesting a Stay from the D.C. Circuit*

On the same day that President Trump signed Executive Order 13783, the Department of Justice asked the D.C. Circuit to stay its consideration of the CPP, even though the court had already heard oral arguments in an *en banc* proceeding. [[107]](#footnote-108)107The government lawyers told the court that EPA needed time to conduct the regulatory reviews mandated by the executive order. [[108]](#footnote-109)108The agency's brief noted that holding the proceedings in abeyance would, "promote judicial economy by avoiding unnecessary adjudication and will support the integrity of the administrative process." [[109]](#footnote-110)109Industry groups and states challenged the CPP supported the motion. [[110]](#footnote-111)110Environmental groups objected to the motion and urged the court to decide the case forthwith. [[111]](#footnote-112)111On April 28, 2017, the D.C. Circuit granted EPA's motion to stay the litigation, thereby giving the agency a chance to rescind the regulation before the court ruled on its legality. [[112]](#footnote-113)112The court gave the parties 60 days to file briefs on whether the court should continue the stay or remand the **[\*169]**case to EPA. [[113]](#footnote-114)113The court issued another order in August 2017 holding the lawsuit in abeyance for another 60 days. [[114]](#footnote-115)114

*2. Reversing Endangerment Finding*

Recognizing that the BACT requirement for new and modified power plants could stymie new power plant construction, conservative think tanks and long-time climate disruption deniers urged Administrator Pruitt to reverse the endangerment finding that triggered all GHG regulation under the CAA. [[115]](#footnote-116)115The Competitive Enterprise Institute filed a formal petition in February 2017 asking EPA to rescind the endangerment finding. [[116]](#footnote-117)116Although the White House initially considered a favorable response, EPA has so far declined to go that far, despite several nudges from the petitioners and criticism from conservative groups. [[117]](#footnote-118)117At his confirmation hearings, Pruitt testified that the endangerment finding was the law of the land and therefore, "must be respected." [[118]](#footnote-119)118To the chagrin of conservative groups, Pruitt reportedly removed a directive to revisit the endangerment finding **[\*170]**from a draft of Executive Order 13783. [[119]](#footnote-120)119And the *New York Times* reported that "a chorus of more pragmatic voices inside the administration and industry" insisted that reversing the endangerment finding "would be a legal morass with an uncertain outcome." [[120]](#footnote-121)120

It would in fact be exceedingly difficult to reverse the endangerment finding in a credible way, given the overwhelming consensus among climate scientists that anthropogenic emissions are in fact contributing to serious climate disruption, the even stronger evidence that has become available since the original 2009 endangerment finding, and the demise of the "hiatus" theory that for several years propped up the climate change deniers' claims. [[121]](#footnote-122)121In a concurring opinion to the D.C. Circuit's decision to hold the challenge to the CPP in abeyance, Judges Tatel and Millett reminded EPA that the D.C. Circuit had already upheld Administrator Jackson's endangerment finding in the litigation involving its triggering and tailoring rules. [[122]](#footnote-123)122Any contrary finding would likewise have to survive judicial review on a record that demonstrated that GHG emissions no longer endangered public health or the environment.

Some industry groups that supported relaxation of environmental requirements worried that an attempt to undo the endangerment finding would bog down the agency in an unwinnable war and would allow environmental groups to paint Republicans as extremists in the climate change debates. [[123]](#footnote-124)123It would also create even more uncertainty about the obligations of electric power companies that would make it difficult to engage in the long-range planning required of large capital expenditures. [[124]](#footnote-125)124Even the editorial page of the *Wall Street Journal* warned that "creating a legally bulletproof non-endangerment **[\*171]**rule would consume a tremendous amount of EPA resources." [[125]](#footnote-126)125

Administrator Pruitt's current effort to assemble a "red team/blue team" debate over the scientific underpinnings of the endangerment finding may reflect a backdoor strategy for bypassing the scientific consensus and putting the endangerment finding back on the table. [[126]](#footnote-127)126In a widely read oped in the *Wall Street Journal*, prominent climate change skeptic, Steve Koonin, suggested that EPA might assign a red team of scientists who are skeptical of climate change claims to review and critique documents like the federal government's National Climate Assessment or the most recent report of the Intergovernmental Panel on Climate Change and assign a blue team of mainstream scientists to rebut the red team's assessment. An appointed commission would "coordinate and moderate the process and then hold public hearings to highlight points of agreement and disagreement, as well as steps that might resolve the latter." [[127]](#footnote-128)127Koonin argued that the red team/blue team approach would be more rigorous than traditional peer review and would "allow the public and decision makers a better understanding of certainties and uncertainties." [[128]](#footnote-129)128

After meeting with Koonin in April 2017, [[129]](#footnote-130)129Administrator Pruitt announced in a June 2017 interview with Breitbart Radio that the American people deserved "a true, legitimate, peer-reviewed, objective, transparent discussion about" climate change and that the red team/blue team approach was a good vehicle for achieving that goal. [[130]](#footnote-131)130Energy Secretary Rick Perry quickly **[\*172]**endorsed the idea, as did prominent climate skeptics. [[131]](#footnote-132)131Public interest groups opposed the idea as "an act of false equivalence" designed give climate skeptics more credibility with the public than they had in the scientific community. [[132]](#footnote-133)132They worried that the debate would become a public spectacle in the genre of "the Scopes trial meets 'the Survivor.'" [[133]](#footnote-134)133A professor of atmospheric sciences at the University of Georgia called the idea a "gimmick" and pointed out that climate skeptics were free to express their criticisms in peer reviewed journals and in comments on drafts of the consensus reports. [[134]](#footnote-135)134Other climate scientists bemoaned the implicit message underlying the proposal that scientists were members of tribes and that one of the tribes had not had a sufficient say in the development of climate science. [[135]](#footnote-136)135Despite the criticism, Pruitt told coal industry executives in late June 2017 that he was going forward with the project. [[136]](#footnote-137)136In September, he asked the Heartland Institute, a prominent critic of EPA's climate initiatives, to identify prospective members of the red team. [[137]](#footnote-138)137He later told a conservative talk radio host that he was assembling the red and blue teams to challenge what he called "the so-called settled science" on climate change. [[138]](#footnote-139)138

*3. Early Actions and State Responses*

Two days after the president signed Executive Order 13783, Administrator Pruitt wrote a letter to all state governors stating the agency's new policy that "States have no obligation to spend resources to comply with a Rule **[\*173]**that has been stayed by the Supreme Court of the United States." [[139]](#footnote-140)139The letter was a signal to those states that were still drafting plans that they should stand down. [[140]](#footnote-141)140In early April, EPA published a notice in the *Federal Register* withdrawing previously published proposals for model trading rules and for the CEIP. [[141]](#footnote-142)141Traveling to the mining town of Sycamore, Pennsylvania, Administrator Pruitt told the assembled miners that the "regulatory assault" on coal was over and that the Trump Administration was going to "grow jobs and show the rest of the world how it's done." [[142]](#footnote-143)142

Environmental agencies in most of the 27 states that challenged the CPP stopped working on their clean power plans after the election. [[143]](#footnote-144)143But many of those states had had already slowed or stopped working on plans when the Supreme Court stayed the rule in February 2016. [[144]](#footnote-145)144Other states continued to prepare plans, and some, like California, went beyond what was called for in the CPP. [[145]](#footnote-146)145A coalition of 20 states and localities responded with a letter to EPA's General Counsel stating that Pruitt's letter was unlawful because the CPP remained the law of the land until overturned by a court. [[146]](#footnote-147)146It further alleged that all of these actions violated Pruitt's obligation to recuse himself from matters upon which he had been on opposite sides of the agency during his term as Oklahoma Attorney General. [[147]](#footnote-148)147

**[\*174]** *4. The CPP Withdrawal NPRM*

On October 9, 2017, EPA Administrator Pruitt flew to Hazard, Kentucky to announce that "[t]he war against coal is over." [[148]](#footnote-149)148The EPA would be repealing the CPP. [[149]](#footnote-150)149The next morning, he signed a notice of proposed rulemaking (NPRM) to that effect. [[150]](#footnote-151)150The agency based the reversal on its conclusion that the CPP rested on an erroneous legal premise that the "best system of emission reduction" could encompass "measures that would generally require power generators to change their energy portfolios through generation-shifting (rather than better equipment or operating their existing plants), including through the creation or subsidization of significant amounts of generation from power sources entirely outside the regulated source categories, such as solar and wind energy." [[151]](#footnote-152)151This interpretation raised the possibility that the CPP would "necessitate changes to a State's energy policy, such as a grid-wide shift from coal-fired to natural gas-fired generation, and from fossil fuel-fired generation to renewable generation." [[152]](#footnote-153)152Instead, the agency, under new leadership, proposed to interpret the phrase "in a way that is consistent with the Agency's historical practice of determining BSER by considering only measures that can be applied to or at the source." [[153]](#footnote-154)153Such measures "must be based on a physical or operational change to a building, structure, facility, or installation at that source, rather than measures that the source's owner or operator *can implement on behalf of* the source at another location." [[154]](#footnote-155)154

The notice elaborated on five legal arguments supporting its changed position, most of which mimicked the arguments of the states and companies in their legal challenges to the rule in the D.C. Circuit. [[155]](#footnote-156)155First, the agency's narrower interpretation of BSER "accord[ed] with the meaning and application of relevant terms and phrases in CAA section 111 as they are used in other, **[\*175]**related sections of the CAA." [[156]](#footnote-157)156Second, it better squared with the agency's new view of congressional intent as reflected in the statute's legislative history. Third, it aligned with the agency's new conception of the "prior understanding of CAA section 111 as reflected in the Agency's prior regulatory actions." [[157]](#footnote-158)157Fourth, it avoided what the agency now regarded as "illogical results when considered with other provisions of the statute." [[158]](#footnote-159)158Finally, it avoided what the agency now regarded as "a policy shift of great significance for the relationship between the federal government and the states" and the relationship between EPA and other federal agencies, like the Federal Energy Regulatory Commission (FERC). [[159]](#footnote-160)159

To support the withdrawal, the agency completely revamped its assessment of the benefits of the CPP. The Obama version of the regulatory impact assessment for the regulation estimated the global benefits of the predicted CO2 emissions reductions, but the Trump version focused exclusively on domestic benefits. [[160]](#footnote-161)160And the Trump version limited the Obama version's estimate of the "co-benefits" attributable to corresponding reductions of particulate matter (PM) to the benefits that resulted from reducing the levels of PM in the ambient air up to the national ambient air quality standards for that pollutant and no further. [[161]](#footnote-162)161At the same time, the Trump version also increased its cost estimate for the rule from $ 8.4 billion to more than $ 33 billion. [[162]](#footnote-163)162

The agency did not promise to promulgate a replacement rule that focused exclusively on source-specific measures, but it cautioned that "any potential future rule that regulates GHG emissions from existing EGUs under CAA section 111(d) must begin with a fundamental reevaluation of appropriate **[\*176]**and authorized control measures and recalculation of performance standards." [[163]](#footnote-164)163EPA intended to issue an advance notice of proposed rulemaking "in the near future" to entertain comments on systems of emission reduction that would be consistent with its new interpretation of BSER. [[164]](#footnote-165)164In announcing the proposed repeal, Administrator Pruitt did not mince words. The Trump Administration was "committed to righting the wrongs of the Obama administration by cleaning the regulatory slate." [[165]](#footnote-166)165

*5. Reactions to the CPP Withdrawal*

Environmental groups were highly critical of the proposed pullback. The Sierra Club predicted that "Donald Trump and Scott Pruitt will go down in infamy for launching one of the most egregious attacks ever on public health, our climate, and the safety of every community in the United States." [[166]](#footnote-167)166Former EPA Administrator Gina McCarthy suggested that repealing the CPP without offering a timeline for its replacement represented "a wholesale retreat from EPA's legal, scientific and moral obligation to address the threats of climate change." [[167]](#footnote-168)167A business group called Environmental Entrepreneurs estimated that the pullback would destroy the opportunity to add 560,000 jobs to the workforce and $ 52 billion to the Gross Domestic Product. [[168]](#footnote-169)168And religious leaders from the Catholic, Protestant, Evangelical, Jewish and Quaker faiths condemned the move as inconsistent with the obligation of human beings to the Earth and to each other. [[169]](#footnote-170)169

Coal companies and coal-dependent power companies praised the reversal. The National Rural Electric Cooperative Association, whose rural co-op generators relied on coal for 60 percent of their power, were pleased to be able to keep their older plants running. [[170]](#footnote-171)170Murray Energy CEO Robert Murray applauded the repeal and urged Pruitt to withdraw the endangerment **[\*177]**finding to ensure that a future administration did not replace it. [[171]](#footnote-172)171The Texas Public Policy Foundation praised EPA for proposing to kill the CPP, but it urged the agency to use the comment period to reconsider the endangerment finding as well. [[172]](#footnote-173)172However, power companies like Pacific Gas & Electric that did not rely heavily on coal were disappointed by the action. [[173]](#footnote-174)173

Attorneys for a coalition of 13 electric utility companies who supported the plan warned Pruitt that the withdrawal might encounter legal problems if the agency did not come up with an alternative plan to replace the CPP. [[174]](#footnote-175)174They predicted that environmental groups would sue the agency, arguing that it had a nondiscretionary duty to promulgate regulations under section 111(d) so long as the endangerment finding and the NSPS remained in effect. [[175]](#footnote-176)175And they obligingly provided a draft of an alternative plan that provided greater flexibility, focused on individual electricity generating units "inside the fence line" and came well within EPA's authority. [[176]](#footnote-177)176

Yet the fact remains that any replacement that focuses exclusively on changes "to or at" individual sources will have to focus on efficiency enhancing changes (sometimes called "heat rate improvement"), like automating processes and fixing leaking seals, that could at best reduce CO2 emissions by 6 percent, far less than the 32 percent reduction that EPA predicted would **[\*178]**result from the CPP. [[177]](#footnote-178)177The Obama EPA rejected that approach as a grossly inefficient way to bring about CO2 reductions from existing power plants. [[178]](#footnote-179)178Environmental groups suggested that enhancing the efficiency of old heavily polluting coal-fired plants could even have the perverse effect of extending their lifetimes by allowing them to compete with natural gas and renewables. [[179]](#footnote-180)179If EPA was determined to adopt a source-specific approach, they argued, it would have to consider more fundamental changes like switching to natural gas or installing carbon capture and storage technology. [[180]](#footnote-181)180

*6. Prospects for Judicial Review of the CPP*

If the D.C. Circuit decides to rule on the pending challenges to the Obama EPA's CPP, it should apply *Chevron* deference to the ambiguous phrase "best system of emission reduction" and uphold the plan. [[181]](#footnote-182)181That holding would create a steep uphill climb for Pruitt to repeal the Obama CPP, because it would undercut the legal analysis that forms the exclusive basis for the repeal. [[182]](#footnote-183)182EPA would need to withdraw the endangerment finding or find some technical basis for repealing the CPP, and either option must be capable of withstanding judicial review under the Administrative Procedure Act's "arbitrary and capricious" test. [[183]](#footnote-184)183On the other hand, the court could simply sit on the case until EPA finalizes the repeal and then dismiss the challenge to the Obama CPP as moot. [[184]](#footnote-185)184

**[\*179]**If the D.C. Circuit decides to remand the Obama EPA's plan and wait until environmental groups and state attorneys general challenge the Trump EPA's repeal of that plan, the court would presumably give *Chevron* deference to the Trump EPA's new legal interpretations and uphold the withdrawal. [[185]](#footnote-186)185The Trump EPA focused on the weakest pillar of the Obama EPA's legal rational--the agency's conclusion that it had the authority to suggest to the states that they regulate "beyond-the-fenceline." However, the Trump EPA's legal edifice also has some cracks. Most importantly, it ignores the fact that the CPP left open the option for states to achieve their GHG reduction goals through source-specific, rate-based measures if they so desired. The key question in the litigation would be whether EPA properly relied on the possibility that states could adopt beyond-the-fenceline measures in setting their CO2 reduction goals. Jeff Holmstead, an attorney for the electric power industry, is confident that a court applying *Chevron* deference would uphold the repeal because, in his view, it merely represents an "interpretation of the statute that existed for 45 years" prior to the Obama Administration. [[186]](#footnote-187)186Apparently, EPA's original interpretation of the meaning of BSER and the agency's subsequent interpretation, which assigned to the same phrase the opposite meaning, are both entitled to *Chevron* deference. Nonetheless, the subsequent interpretation may not, as a practical matter, receive the same degree of deference if the court has already upheld the former interpretation. Thus, in the scheme of things, timing may be everything.

In any event, the litigation over EPA's repeal of the CPP and any replacement that it comes up with could last until after the 2020 elections, and the outcome is far from certain. [[187]](#footnote-188)187So, when President Trump boasted to a delighted crowd at an Alabama rally in September 2017 that the CPP was "boom, gone," he was making a prediction, not stating a fact. [[188]](#footnote-189)188

**[\*180]** *7. Conclusions*

EPA Administrator Pruitt addressed the Republican base when he announced the CPP pullback in a Kentucky speech with that state's senior senator, Mitch McConnell on the stage. [[189]](#footnote-190)189In addition to highlighting the Trump Administration's efforts to save the coal industry, Pruitt praised McConnell for blocking President Obama's nomination of Merrick Garland to the Supreme Court to a huge round of applause. [[190]](#footnote-191)190Administrator Pruitt's announcement was about politics. It was not about policy or science, and the pullback ran counter to overall public opinion. According to a poll conducted by the Associated Press and the NORC Center for Public Affairs Research, 61 percent of the respondents (but only 43 percent of Republicans) thought that government action was needed to address climate change and only 20 percent thought that EPA should rescind the CPP. [[191]](#footnote-192)191But it almost certainly played well with Trump supporters who were expecting the administration to reduce the burden of environmental regulations on American businesses.

Although the NPRM said that EPA would at some future time consider promulgating a rule to replace the CPP, few observers are holding their breath. [[192]](#footnote-193)192According to Tim Profeta, the Director of Duke University's Nicholas Institute for Environmental Policy Solutions, "[i]t seems clear that there's no desire to regulate greenhouse gases from power plants any time in the near future." [[193]](#footnote-194)193Pointing out that the Trump Administration had almost a year to come up with an alternative rule since the 2016 election, Professor Vicki Arroyo suggested that the Administration was "basically running out the clock." [[194]](#footnote-195)194In the meantime, existing power plants continue to pour millions of tons of CO2 into Earth's warming atmosphere.

**[\*181]** *F. Pulling Back the Power Plant New Source Performance Standards*

A prerequisite to regulating existing power plants under section 111 was EPA's rule--promulgated simultaneously with the CPP--establishing NSPS for CO2 emissions from new and modified power plants. The NSPS were less important than the guidelines for existing sources because they served mainly as a backstop for "best available technology" determinations for new and modified major emitting facilities under the Clean Act's Prevention of Significant Deterioration program. Nevertheless, they were of great concern to the electric power and coal industries because the standards that EPA promulgated for coal- and ***oil***-fired plants were based on the performance of an "efficient new supercritical pulverized coal utility boiler implementing partial carbon capture and storage." [[195]](#footnote-196)195Because nearly all coal-dependent power companies maintained that carbon capture and storage (CCS) was not yet an available technology for removing CO2 from power plant emissions, they believed that the NSPS was effectively a ban on building new coal fired plants until CCS did become available. [[196]](#footnote-197)196The standard did, however, allow a new plant to meet its requirements by co-firing with natural gas, an option that allowed companies to build new coal-fired plants without CCS. [[197]](#footnote-198)197

Like CPP, the NSPS for power plants was under challenge in the D.C. Circuit at the change in administrations, but the litigation was not as far along as the CPP lawsuit. Industry groups argued that because the record compiled by EPA did not support its conclusion that CCS was "adequately demonstrated," the standard was invalid. [[198]](#footnote-199)198Therefore, the industry groups and several state attorneys general urged Administrator Pruitt to pull back the NSPS to **[\*182]**reevaluate the previous administration's conclusion. [[199]](#footnote-200)199In August 2017, the court granted the Justice Department's request to hold the litigation in abeyance until the Trump Administration decided whether to repeal the regulation. [[200]](#footnote-201)200As of this writing, EPA has taken no further action on NSPS regulations.

Unlike the CPP, no court had stayed the effectiveness of the regulation at the time that the D.C. Circuit granted the Justice Department's request to hold the litigation in abeyance. Accordingly, the NSPS is applicable to any company that desires to build a new fossil fuel-fired power plant. [[201]](#footnote-202)201Industry attorney Jeff Holmstead suggested that neither the industry nor the agency was in a hurry to promulgate a revised NSPS because "people aren't building coal-fired plants in the current market." [[202]](#footnote-203)202In addition, some electric power companies strongly support CCS as the best way to achieve the goal of "clean coal," and they may not be anxious to join in an attack on a standard that requires that technology. [[203]](#footnote-204)203In any event, the pullback is not likely to have any impact on either emissions or construction of new power plants for the foreseeable future.

*G. Coal Industry's Emergency Petition to DOE*

Sometime before late July 2017, several coal companies petitioned DOE to issue an emergency order under section 202(c) of the Federal Power Act, which authorizes the Secretary of Energy to order a power plant to operate when an emergency exists because of a sudden increase in demand for electricity or a sudden reduction in supply resulting from the loss of power producing facilities or fuel or water for such facilities. [[204]](#footnote-205)204The petitioners wanted DOE to declare a two-year moratorium on closures of coal-fired power plants to prevent their owners from declaring bankruptcy, which, they maintained, would pose a threat to the reliability of the nationwide electricity grid. [[205]](#footnote-206)205Although it was unclear whether such an order would waive **[\*183]**the plant's liability for any resulting violations of the Clean Air Act, [[206]](#footnote-207)206the companies demanded relief from environmental requirements and current market stresses. [[207]](#footnote-208)207According to Robert Murray of Murray Energy Corporation, President Trump, referring to the DOE order, told Energy Secretary Rick Perry, "I want this done" on several occasions in which Murray was present. [[208]](#footnote-209)208Nevertheless, DOE denied the request on the ground that there was no emergency warranting a section 202(c) order, which is ordinarily limited to individual plants, not entire industries. [[209]](#footnote-210)209Declining to say whether Trump ordered Perry to issue the order, a DOE spokesperson later explained that the White House and DOE were "in agreement that the evidence does not warrant the use of this emergency authority." [[210]](#footnote-211)210

The petition denial is the only instance thus far in which the Trump Administration has varied from the agenda of the coal industry and coal-dependent electric power companies. [[211]](#footnote-212)211The denial should come as no surprise to anyone, because the poor economic health of the coal industry is hardly an emergency warranting a nationwide moratorium on closures of coal-fired power plants. There is very little evidence that the nationwide grid is at risk of a breakdown as coal-fired power plants are taken offline. [[212]](#footnote-213)212In fact, the grid has become more resilient with the recent addition of "high-efficiency natural gas plants, dozens of wind farms, and thousands of solar installations." [[213]](#footnote-214)213Because little or no evidence supports the fossil fuel industry's reliability claims, a DOE grant of a section 202(c) order in the future would undoubtedly be challenged by environmental groups and probably by the natural gas industry. The reviewing courts would need to decide whether DOE was arbitrary and capricious in determining that emergency conditions warranted such an extreme intervention into the marketplace and whether the Federal Power Act supersedes the Clean Air Act in emergency situations. In any event, no temporary emergency order will be sufficient to protect the coal industry from the long-term market **[\*184]**forces that are persistently pushing the electric power industry away from

coal. [[214]](#footnote-215)214

*H. DOE's Grid Resiliency Directive*

On September 28, 2017, Secretary of Energy Rick Perry wrote a letter to the sitting commissioners on the Federal Energy Regulatory Commission (FERC) directing them "to issue rules to protect the American people from the threat of energy outages that could result from the loss of traditional baseload capacity." [[215]](#footnote-216)215Perry believed that it was important that the diverse mix of resources necessary to retain grid resiliency and reliability include "traditional baseload generation with on-site fuel storage" capable of "withstand[ing] major fuel supply disruptions caused by natural and manmade disasters." [[216]](#footnote-217)216In a dramatic reversal of past industry practice, it had become so costly to run baseload coal and nuclear power plants that power generating companies were relying upon available natural gas and renewable resources until those supplies were exhausted, at which point they called on their coal and nuclear plants. [[217]](#footnote-218)217The problem with that approach was that the price of electricity was so low that it was not economical to fire up coal and nuclear plants once they were taken offline. [[218]](#footnote-219)218This posed a reliability risk to the grid and decreased its resiliency. [[219]](#footnote-220)219Both Perry and EPA **[\*185]**Administrator Pruitt regarded this as a major threat to both the economy and national security. [[220]](#footnote-221)220

Invoking his power under section 403 of the Department of Energy Organization Act of 1977 for only the second time since its enactment, [[221]](#footnote-222)221Perry ordered FERC to use its authority under sections 205 and 206 of the Federal Power Act [[222]](#footnote-223)222to publish a proposed rule allowing unregulated "merchant" electric power generators selling electricity in wholesale markets to fully recover the costs of providing "fuel-secure" generation from units that retained a 90-day fuel supply on site "in the event of supply disruptions caused by emergencies, extreme weather, or natural or man-made disasters." [[223]](#footnote-224)223As a practical matter, the eligible units had to be coal burning or nuclear, because natural gas burning power plants cannot store significant amounts of fuel on site and wind and solar generators do not burn fuel.

The authority that Secretary Perry invoked to support his order authorized both the Secretary of Energy and FERC "to propose rules, regulations, and statements of policy of general applicability with respect to any function" within FERC's jurisdiction. [[224]](#footnote-225)224It then assigned exclusive jurisdiction over such proposals to FERC and ordered FERC to "consider and take final action on any proposal made by the Secretary . . . in an expeditious manner in accordance with such reasonable time limits as may be set by the Secretary for the completion of action by the Commission on any such proposal." [[225]](#footnote-226)225

The DOE's proposed rule ordered the independent system operators (ISOs) and regional transmission operators (RTOs) that managed wholesale electricity markets to establish "just and reasonable" tariffs for the "purchase of electric energy" from eligible reliability and resiliency resources and for "recovery of costs and a return on equity for such resource dispatched during grid operations." [[226]](#footnote-227)226The just and reasonable rate had to include pricing **[\*186]**to ensure that each eligible resource was "fully compensated for the benefits and services it provid[ed] to grid operations, including reliability, resiliency, and on-site fuel assurance, and that each eligible resource recover[ed] its fully allocated costs and a fair rate of return." In effect, system operators would need to pay operators of idle coal-fired and nuclear plants to keep their plants ready to run, so long as they hoarded 90 days-worth of fuel. [[227]](#footnote-228)227One industry analyst dubbed the proposal the "squirrel plan." [[228]](#footnote-229)228

Perry's letter specified that eligible units would have to comply with all environmental regulations and could not be subject to cost-of-service regulation by any state or local authority. [[229]](#footnote-230)229Finally, Perry "direct[ed]" the commission to complete the rulemaking process within 60 days from the date of publication of the notice of proposed rulemaking and to have the final rule take effect within 30 days of publication of the final rule. [[230]](#footnote-231)230The ISOs and RTOs would then have 15 days to submit the required tariffs. [[231]](#footnote-232)231

Perry believed that these rather drastic steps were "especially urgent to prevent premature retirements" of fuel-secure generation resources. [[232]](#footnote-233)232In support of that contention, Perry's letter cited a recently completed DOE staff report on the reliability of electricity markets, which concluded that 80 percent of the 59,000 megawatts of generation capacity that companies had retired between 2002 and 2016 consisted of coal-fired power plants and that an additional 12,700 megawatts of coal-fired capacity was scheduled for retirement by 2020. [[233]](#footnote-234)233The letter noted that the electric generating industry's timely response to the 2014 "polar vortex," where coal-fired units operating at reduced loads were called into full-time service and nuclear units ran at 95 percent capacity to meet the extraordinary demand during that event, demonstrated the need for fuel-secure resources. [[234]](#footnote-235)234Perry also cited "a growing recognition" that the markets that ISOs and RTOs managed did "not necessarily pay generators for all the attributes that they provide to the grid, including resiliency." [[235]](#footnote-236)235One of the DOE staff report's primary recommendations was to protect grid resiliency by "correct[ing] distortions **[\*187]**in price formation in the organized markets." [[236]](#footnote-237)236FERC therefore had an obligation to promulgate rules requiring the ISOs and RTOs "to reduce the chronic distortion of those markets threating the resilience of the nation's electricity system." [[237]](#footnote-238)237Nowhere in the letter did Perry mention the value to the public of reduced CO2 emissions and other environmental benefits of reduced reliance on coal-fired power plants. [[238]](#footnote-239)238

The coal industry, the nuclear power industry, and electric power companies that depended heavily on coal and nuclear power strongly supported the directive, as did trade associations and think tanks that they supported. [[239]](#footnote-240)239Murray Energy CEO Robert Murray called the proposal "the single greatest action that has been taken in decades to support low-cost reliable electric power in the United States." [[240]](#footnote-241)240The CEO of FirstEnergy Corporation commended Perry for attempting to correct "faulty market conditions" by keeping "essential baseload plants operating." [[241]](#footnote-242)241Exelon Corporation was "pleased that DOE is proposing action to ensure that attributes of nuclear generation are fully and appropriately valued." [[242]](#footnote-243)242The head of the American Coalition for Clean Coal Electricity was pleased that the proposal would **[\*188]**"finally value the on-site fuel security provided by the coal fleet." [[243]](#footnote-244)243The Texas Public Policy Foundation, a strong supporter of the coal industry, praised Perry's proposal for attempting to "eliminate renewable energy subsidies and the regulations" that made coal less competitive. [[244]](#footnote-245)244Supporters argued that coal-fired power plants had encountered a number of challenges, including "massive environmental compliance expenditures, low natural gas prices, renewable portfolio standards, tax incentives for renewables, and wholesale market rules that did not value the reliability and resilience attributes of the coal fleet." [[245]](#footnote-246)245They warned that without FERC intervention, another wave of coal and nuclear plant retirements would put the "long-term price stability benefits" of coal and nuclear power at risk. [[246]](#footnote-247)246

The directive, however, encountered a firestorm of opposition from a wide variety of stakeholders, including the natural gas industry, [[247]](#footnote-248)247renewable energy companies, [[248]](#footnote-249)248independent power producers, [[249]](#footnote-250)249vertically integrated utility companies, [[250]](#footnote-251)250commercial and industrial electricity consumers, [[251]](#footnote-252)251system operators, [[252]](#footnote-253)252and environmental groups. [[253]](#footnote-254)253The head of the nation's largest grid system operator, PJM Interconnection, testified to a House subcommittee that "[f]or policymakers to simply try to 'outguess' the market or supplant it with their particular policy choice is simply a recipe for building an unsustainable market outcome that no investor would seriously consider **[\*189]**and for which no consumer would ultimately benefit." [[254]](#footnote-255)254Five former FERC chairpersons wrote that the proposal would "fundamentally distort" wholesale electricity markets, undermine investor confidence, and make the grid less reliable. [[255]](#footnote-256)255One former Republican member of the commission bluntly referred to the proposal as "cash for cronies." [[256]](#footnote-257)256Even some coal-dependent power companies were dubious about the proposal. [[257]](#footnote-258)257The CEO of Dynegy, a large merchant generator that relied heavily on coal called the proposal "nothing more than just a new subsidy" that was "designed to counter the efficiency of the marketplace and to save assets that should be exiting the market." [[258]](#footnote-259)258

Critics of the proposal first denied its underlying premise that the reliability and resilience of the grid were at risk. [[259]](#footnote-260)259They cited a recent report by the North American Electric Reliability Corporation, the entity charged with ensuring the resiliency and reliability of the national grid, concluding that "the state of reliability in North America remains strong, and the trend line shows continuing improvement year over year." [[260]](#footnote-261)260The author of the recent DOE staff report that Secretary Perry cited in his letter told the press that "[t]he mainland grid is clearly reliable today, and fairly resilient . . . and it is clearly not in an emergency yet." [[261]](#footnote-262)261The report itself concluded that the grid was performing reliably with new gas-fired power plants, renewable energy, and demand-side management making up the capacity losses attributable to retiring coal and nuclear plants. [[262]](#footnote-263)262A report prepared for the Natural Resources Defense Council ("NRDC") by the Brattle Group found that there was "no special need for continuous power supply to come from a single [baseload] unit . . . rather than a mix of resources" that could include demand-side **[\*190]**management, natural gas, renewable resources and storage. [[263]](#footnote-264)263Problems with resiliency, critics argued, had more to do with downed power lines and other failings of local grids than with the sources of power to those grids. [[264]](#footnote-265)264Critics accused Perry of "crying wolf" in order to fulfill candidate Trump's promises to the coal and nuclear industries. [[265]](#footnote-266)265Energy consultant ICF International argued that instead of providing a windfall for nuclear and coal plant operators, the Trump Administration should urge FERC to issue more "reliability must-run" orders, which provide for cost recovery in situations in which the retirement of a plant would pose a threat to the reliability of a local grid. [[266]](#footnote-267)266

Second, critics characterized the proposal as a call for a return to regulated wholesale markets that would sacrifice all of the benefits to consumers of the deregulation that FERC had accomplished since the second term of the Clinton Administration. [[267]](#footnote-268)267A member of the Montana Public Service Commission predicted that the proposal would "literally lead to a round of government price fixing in the electric industry that would put us back the better part of a century from where we are today." [[268]](#footnote-269)268According to Professor Joel Eisen, the proposal would bring about "the most sweeping change to the wholesale electricity markets since their inception." [[269]](#footnote-270)269Former FERC chairman John Wellinghoff, an Obama appointee, predicted that the proposal "would blow the market up." [[270]](#footnote-271)270The head of a coalition of industrial and commercial consumers complained that the proposal would "impose higher energy costs on consumers for no tangible benefit by forcing electricity **[\*191]**customers to pay and keep uneconomic power plants in operation." [[271]](#footnote-272)271The Sierra Club agreed that the subsidy could add billions to consumers' electric bills. [[272]](#footnote-273)272Myron Ebell of the Competitive Enterprise Institute supported burning more coal, but he did not believe that "the right way to solve the problem . . . is to add on market-distorting subsidies." [[273]](#footnote-274)273Even the American Coalition for Clean Coal Electricity, a trade association for coal companies and coal-dependent electric power companies, did not fully endorse the proposal, fearing it could lead to cost-of-service rate-making in previously deregulated wholesale markets. [[274]](#footnote-275)274

Third, the proposal represented a dramatic departure from FERC's "fuel neutral" approach to regulating electricity because it clearly favored coal and nuclear power over natural gas and renewables. One critic noted that the proposal would protect "old, inefficient, fully-depreciated assets . . . that . . . made lots and lots and lots of money before the advent of shale gas," and he cautioned that it was "the antithesis of what capitalism is about." [[275]](#footnote-276)275Environmental groups saw the proposal as an attempt "to prop up uneconomic resources that pollute," which to them was "very discouraging." [[276]](#footnote-277)276

Fourth, subsidizing coal and nuclear plants would not necessarily provide additional resiliency during severely cold weather and floods, because those conditions could compromise coal and nuclear plants as well as natural gas pipelines and plants. [[277]](#footnote-278)277Having 90 days' worth of fuel on-site could **[\*192]**help mitigate supply disruptions, but only 0.0007 percent of outages during 2012-2016 were attributable to fuel supply shortages. [[278]](#footnote-279)278On-site supplies would do little to secure the grid against other sources of outages. [[279]](#footnote-280)279For example, Perry's letter failed to mention that during the Polar Vortex, around 25 percent of the coal-fired capacity in the heavily affected PJM Interchange was forced offline by low temperatures, while wind power and demand response programs helped fill the void. [[280]](#footnote-281)280More recently, floodwaters from Hurricane Harvey forced NRG to take two coal-fired units at its W.A. Parish Generating Station offline because the coal piles were too wet to burn. [[281]](#footnote-282)281

Fifth, critics questioned Perry's authority to determine the substance of the regulation, noting that FERC had the final say on the content of the final rule. [[282]](#footnote-283)282They further argued that DOE had not provided a sufficient factual basis for concluding that existing practices were unjust, unreasonable, unduly discriminatory or preferential under the Federal Power Act. [[283]](#footnote-284)283The FERC commissioners assured the critics that the commission would independently consider the proposal and reach its own conclusions about whether intervention into wholesale markets was appropriate. [[284]](#footnote-285)284

Secretary Perry gamely defended the DOE's proposal. Testifying before a subcommittee of the House Committee on Energy and Commerce in mid-October 2017, he agreed that the added cost to consumers that would result from the rule was an important consideration. [[285]](#footnote-286)285However, to him the issue **[\*193]**was: "What's the cost of freedom?" [[286]](#footnote-287)286He did not want to rely "on the free market" to protect American freedom. [[287]](#footnote-288)287

FERC quickly responded to Perry's directive by publishing a notice stating that it would take public comment on DOE's proposal for three weeks and allow replies to the comments for an additional two weeks. [[288]](#footnote-289)288As it became clear that the coal and nuclear industries were at odds with ***oil*** and gas interests, Republican strategists worried that the initiative would become another fault line along which supporters of their party fractured. [[289]](#footnote-290)289On October 10, 2017, DOE sent to the *Federal Register* a modification of the NOPR that limited the proposal to merchant power plants (plants not subject to state public utility commission regulation) in ISO and RTO systems with energy and capacity markets. [[290]](#footnote-291)290

On January 8, 2018, FERC unanimously rejected Secretary Perry's proposed resiliency rule, finding that DOE had not demonstrated that existing rules governing wholesale electricity pricing were unjust and unreasonable. [[291]](#footnote-292)291The grid operators had on many occasions amended their rules to ensure that generators had secure fuel supplies, and they were adapting to their greater reliance on natural gas and renewables. [[292]](#footnote-293)292Nothing in the record suggested that this was an unjust or unreasonable approach. [[293]](#footnote-294)293Furthermore, DOE had not demonstrated that its proposed remedy was not unduly discriminatory or preferential. [[294]](#footnote-295)294The commission did, however, create a new docket to "examine holistically the resilience of the bulk power system" and to **[\*194]**come to some agreement about "what resilience of the bulk power system means and requires." [[295]](#footnote-296)295It asked the six regional grid operators to provide information on those questions within 60 days and invited public, after which it might issue another order. [[296]](#footnote-297)296Secretary Perry said that he was pleased that his proposal had "initiated a national discussion on the resiliency of our electric system," and he promised to work with FERC to address "market distortions that are putting the long-term resiliency of our electric grid at risk." [[297]](#footnote-298)297

The resiliency proposal was an attempt to bring about a renewal of the coal and nuclear industries to create, or at least maintain, jobs for coal miners and other workers in spite of the signals from the market that coal and nuclear were uneconomic. [[298]](#footnote-299)298It seems unlikely that FERC will approve any plan to subsidize the coal industry and owners of coal-fired power plants by re-regulating wholesale electricity markets after hearing from the system operators and other stakeholders. [[299]](#footnote-300)299In a separate concurrence, Commissioner Richard Glick observed that "[t]he Proposed Rule had little, if anything, to do with resilience, and was instead aimed at subsidizing certain uncompetitive electric generation technologies." [[300]](#footnote-301)300If FERC had agreed to re-regulate wholesale markets to ensure that coal and nuclear plants receive greater compensation for their electricity than natural gas and renewables, it might have delayed or even halted the ongoing transformation of the electric power industry. [[301]](#footnote-302)301Commissioner Cheryl LaFleur noted that even if DOE had demonstrated a resiliency problem, she had "serious concerns about the nature of the proposed remedy, which would address the issue not through market rules but through out-of-market payments to certain designated [generation] resources." [[302]](#footnote-303)302Companies might have put off retiring some of their older, less-efficient coal-fired units. [[303]](#footnote-304)303But even that may have proven uneconomical, because most coal-fired plants would have had to purchase more coal to increase their stockpiles--from the current 75-day average **[\*195]**to the proposal's 90-day requirement--and they would have had to spend more money on personnel and equipment to maintain the larger piles. [[304]](#footnote-305)304

*I. A Subsidy for Appalachian Coal*

Sharing the platform with President Trump in early August 2017, West Virginia Governor Jim Justice announced his switch from the Democratic to the Republican party. [[305]](#footnote-306)305At the same time, Governor Justice announced that he had presented President Trump with a proposal for a congressionally funded program to pay Eastern power plants $ 15 per ton for coal that they purchase from the Central or Northwest Appalachian regions, a subsidy that would cost the federal government about $ 4.5 billion annually. [[306]](#footnote-307)306The governor explained that the coal mines in those regions were vital to national security and that the subsidies were warranted to keep those mines from closing down. [[307]](#footnote-308)307Governor Justice also presented the idea to Energy Secretary Rick Perry, Vice President Mike Pence, and Senior Presidential Advisor Jared Kushner. [[308]](#footnote-309)308

Not surprisingly, coal companies from states not covered by the proposed subsidy were adamantly opposed to the idea, arguing that "the federal government should not be in the business of picking winners and losers in the market through subsidies that pit one coal producing region against **[\*196]**another." [[309]](#footnote-310)309The conservative Heritage Foundation, a consistent Trump ally in policy debates, also expressed concern that Congress would "expand the subsidy pool even further." [[310]](#footnote-311)310Nevertheless, the governor reported that the president was "really interested" in the idea. [[311]](#footnote-312)311

Governor Justice's proposal for subsidizing Appalachian coal by paying power plants to burn coal from that region has not gained any traction in Congress thus far. Yet, the apparent quid pro quo between President Trump and Governor Justice left open the possibility that the Administration would support the plan if Congress took it up. [[312]](#footnote-313)312However, the fact that the Chairman of the Senate Environment and Public Works Committee, John Barraso (R-Wyo.), thought that the idea "doesn't make sense" and that environmental groups also opposed the proposal suggests that it is not likely to go far in the future. [[313]](#footnote-314)313

*J. Tariff on Solar Panels*

In April 2017, Suniva, Inc., the nation's largest manufacturer of solar panels declared bankruptcy. [[314]](#footnote-315)314Soon thereafter, Suniva shocked the solar installation and service industry by filing a petition with the United States International Trade Commission (ITC), asking the Trump Administration to impose a stiff tariff on imported solar panels. [[315]](#footnote-316)315Suniva complained that it could not compete with cheap solar panels from China and elsewhere because they were subsidized by their governments. [[316]](#footnote-317)316Suniva was an odd entity to bring the request, because its major shareholder was a Chinese corporation and because it imported many of the components and constituents **[\*197]**of its solar panels from South Korea, Germany, Canada, and China. [[317]](#footnote-318)317The petition was strongly opposed by the Solar Energy Industries Association (SEIA), which represented solar installation companies that had greatly profited from low priced imported panels, and a number of free-market conservative groups like the Heritage Foundation and the Cato Institute. [[318]](#footnote-319)318SEIA tweeted out an advertisement featuring Fox News commentator (and Trump supporter) Sean Hannity opposing the tariff. [[319]](#footnote-320)319Even the *Wall Street Journal's* editorial page came out against the proposed tariff. [[320]](#footnote-321)320

Opponents argued that a decision imposing a high tariff on those products could throw the market for solar energy into disarray. [[321]](#footnote-322)321A tariff would make all solar panels more expensive just at a time when solar energy was becoming competitive with fossil fuel-fired power. [[322]](#footnote-323)322Higher priced panels would make solar projects more expensive, and that would result in a decline in demand that could end the solar energy boom of the previous several years. [[323]](#footnote-324)323As fossil fuel-fired plants provided cheaper power, GHG emissions would increase dramatically. [[324]](#footnote-325)324They pointed out that far more American workers were employed in turning imported solar cells in to solar panels than were employed in manufacturing solar cells. [[325]](#footnote-326)325Opponents worried that President Trump would see the petition as an opportunity to show his supporters that he was "putting America first" while at the same time giving a massive boost to his efforts to aid the coal industry. [[326]](#footnote-327)326

**[\*198]**In September 2017, the ITC found that imports of solar cells and modules were causing "serious injury to the domestic [solar manufacturing] industry." [[327]](#footnote-328)327Then in late October 2017, the commissioners recommended three remedies, ranging from a limit on the total power of solar cells that could be imported in any given year to tariffs ranging from 10 percent to 35 percent that would decrease as domestic solar manufacturers recovered. [[328]](#footnote-329)328Accepting the ITC finding in January 2018, President Trump imposed a tariff on solar cells and solar panels from anywhere in the world. [[329]](#footnote-330)329He set the tariff at 30 percent for the first year, and it would decrease 5 percent per year for the next three years, at which point it would end. [[330]](#footnote-331)330The president, however, exempted the first 2.5 gigawatts of imported solar cells to ensure that domestic solar panel assemblers and installers were not harmed too drastically by the action. [[331]](#footnote-332)331Although the tariffs were not nearly as steep as the local manufacturers had requested, SEIA predicted that up to one-third of the 260,000 workers in the solar sector could lose their jobs. [[332]](#footnote-333)332Bloomberg New Energy Finance estimated that the tariffs could add 10 percent to the cost of building utility-scale solar plants and 3 percent to the cost of installing rooftop solar panels. [[333]](#footnote-334)333

*K. Eliminating Renewable Tax Credits*

In October 2017, Administrator Pruitt announced that he favored eliminating the federal tax credits for wind and solar power. [[334]](#footnote-335)334Currently, **[\*199]**wind generators can receive a tax credit of 2.3 cents per kilowatt hour, and companies that install solar arrays can receive credits equal to 30 percent of their capital investments. [[335]](#footnote-336)335Pruitt's suggestion would, of course, require an act of Congress or a decision by Congress to allow the existing credits to lapse in 2020 and 2022, respectively, by failing to reauthorize them. [[336]](#footnote-337)336Pruitt's claim that he merely wants to put renewables and fossil fuels on an equal footing, however, ignores the considerable subsidies that the federal government has provided to the latter sources of electricity over the years. [[337]](#footnote-338)337Thus far, there has been no observable move in Congress to abolish the credits, but it is quite possible that Congress could drop the credits in the future.

Reducing the tax advantages for renewables could put coal and natural gas in a better position to continue to dominate the electric power market. This would slow down or reverse the trend toward reduction in CO2 emissions from power plants. It would, however, do nothing to the current cost disparity between coal and natural gas. Taking away the tax advantages of investing in solar and wind power would reduce the speed with which those technologies penetrated electricity markets, but it would probably not result in a substantial increase in the use of coal, so long as companies like Google, Bank of America, and General Motors remain committed to 100 percent use of renewables and states continue to enforce renewable portfolio standards. [[338]](#footnote-339)338

IV. THE TRUMP EFFECT

*A. Effect on Power Plant Emissions*

*1. Introduction*

The eight years of the Obama Administration saw coal's fortunes fall, rise, and fall again as the electric power industry was buffeted by winds of change. These changes were largely driven by declining natural gas prices, **[\*200]**greater efforts to reduce demand through end-use efficiency and demand-response programs, EPA regulations, and an extraordinary campaign by the Sierra Club and other environmental groups to prevent companies from building new power plants and forcing them to retire existing power plants. As companies were forced to internalize the externalities of burning coal, the economics of coal-fired power plants looked less and less attractive. [[339]](#footnote-340)339American Electric Power, one of the largest coal-users in the country, announced in June 2013 that coal would account for less than 50 percent of its capacity in 2020. [[340]](#footnote-341)340A financier with Deutsche Bank called coal "a dead man walking" because banks would not finance them, insurance companies would not insure them, EPA was "coming after them," and "the economics to make it clean don't work." [[341]](#footnote-342)341Even some state public utility commissions turned against coal. The head of the Arizona Corporation Commission promised that Arizona would "never again" permit another coal-fired power plant to be built within the state. [[342]](#footnote-343)342Robert Murray declared in November 2014 that anyone who believed that the domestic coal market would experience a revival either did not understand the business or was "smoking dope." [[343]](#footnote-344)343

*2. A Transformed Electric Power Industry*

By the time that Donald Trump took over the oval office, most major electric power companies had already initiated the transformation from coal to natural gas and renewables. [[344]](#footnote-345)344Demand for electrical power was not increasing--despite population increases and an economic recovery--in large part due to end-use energy conservation measures and state renewable portfolio standards. [[345]](#footnote-346)345Low natural gas prices played a major role in the **[\*201]**transformation. [[346]](#footnote-347)346Declining prices for renewable energy also caused the industry to migrate away from coal. [[347]](#footnote-348)347Demand from environmentally conscious customers, including some major corporate entities, ensured that electric power companies continued to expand their renewable offerings. [[348]](#footnote-349)348The average capacity factor for coal-fired plants (i.e., the percentage of time that they actually run) fell from 61 percent in 2014 to 52 percent in 2016. [[349]](#footnote-350)349It simply did not pay to maintain an aging coal or nuclear plant that only ran half the time. [[350]](#footnote-351)350When it came to building new facilities, the industry faced 20-30 year time horizons and could not afford to be swayed by the deregulatory activities of a single presidential administration. [[351]](#footnote-352)351All of these trends appear to be continuing into the foreseeable future, with or without EPA's Clean Power Plan. [[352]](#footnote-353)352Even President Trump's top economic advisor has concluded that "[c]oal doesn't even make that much sense anymore as a feedstock." [[353]](#footnote-354)353

Many of the nation's largest power generators say that they will continue to invest in natural gas and renewables and include CO2 reductions as part of their overall corporate strategies, whether or not EPA repeals the CPP. [[354]](#footnote-355)354In June 2018, the proposed Wind Catcher Energy Connection project was approved at a cost of $ 4.5 billion to purchase a massive 2,000 megawatt **[\*202]**wind farm in Oklahoma, distribute its power over four states, and recover the cost of the purchase from its ratepayers. [[355]](#footnote-356)355It is a model that is becoming increasingly attractive to large power companies. Instead of purchasing power from renewable generators, they purchase the generating capacity and profit from the low-cost energy. [[356]](#footnote-357)356NextEra Energy and Xcel Energy employed the same model to acquire renewable resources. [[357]](#footnote-358)357Another major player, Duke Energy, still plans to reduce CO2 emissions by 40 percent by 2030, and it has no plans to increase its reliance on coal. [[358]](#footnote-359)358The Southern Company, which dominates the electricity markets in the Southeast, announced in October 2017 that the CPP repeal will have only a marginal effect on its future plans. [[359]](#footnote-360)359

DTE Energy, a major supplier of electricity to the Detroit area, remains on track to comply with the CPP, and its plans are not going to change, "whether the Clean Power Plan survives or dies on the vine." [[360]](#footnote-361)360Merchant generator, Entergy Corporation, is adhering to its plans to reduce its CO\_emissions by 20 percent from 2000 levels by 2020. [[361]](#footnote-362)361PNM Resources of New Mexico plans to replace two coal-fired units totaling 783 megawatts of power, with solar and nuclear energy. [[362]](#footnote-363)362After agreeing in a 2014 settlement with EPA to install NOx controls at its massive Navajo plant in Northern Arizona, the Salt River Project decided in the fall of 2017 to retire the **[\*203]**plant and cease production at the mine that supplied its coal. [[363]](#footnote-364)363Having made its peace with EPA, the Project's decision was prompted by the economic impossibility of competing with cheap natural gas and renewables. [[364]](#footnote-365)364

Even in coal-friendly Texas, inexpensive natural gas and wind generation is driving companies to retire coal-fired plants ahead of schedule. [[365]](#footnote-366)365The same week that EPA published its proposed CPP repeal, Vistra Energy's Luminant subsidiary said that it would be retiring its coal-fired Monticello, Big Brown and Sandow plants, with a capacity totaling 4 gigawatts, by early 2018. [[366]](#footnote-367)366One of the Sandow units was built in 2009 and was nowhere near the end of its useful life. [[367]](#footnote-368)367Rice University engineering professor Daniel Cohan observed that "Trump can repeal environmental rules, but he can't repeal economics." [[368]](#footnote-369)368A March 2017 survey of utility industry executives found that large majorities expected that their companies' power mixes would include more renewable resources and distributed generation in the next 10 years. [[369]](#footnote-370)369Rural cooperatives are also relying heavily on gas and wind power, having added more than 900 megawatts of wind power in 2016 at the same time that it retired or converted to gas 700 megawatts of coal-fired power. [[370]](#footnote-371)370

At least one company has experienced pushback from its shareholders for failing to take advantage of the Trump Administration's radically different approach to coal. A January 2017 announcement by merchant generator **[\*204]**NRG Corporation that it would be adhering to its plan to reduce CO2 emissions by 50 percent by 2030 and 90 percent by 2050 [[371]](#footnote-372)371precipitated a revolt by activist hedge fund investors, who installed two members on NRG's board with the goal of selling off many of its renewable projects. [[372]](#footnote-373)372One of those directors, Barry T. Smitherman, is a former chairman of the Texas Public Utility Commission and a climate change skeptic. [[373]](#footnote-374)373New York City's comptroller on behalf the city pension funds challenged Smitherman's appointment, arguing that his views on global warming disqualified him. [[374]](#footnote-375)374Nonetheless, the company's shareholders voted overwhelmingly in favor of leaving him on the board. [[375]](#footnote-376)375Although NRG's Vice President for Sustainability insists that the company remains committed to its GHG reduction goals, [[376]](#footnote-377)376the company supported the CPP repeal because it wanted EPA to improve its "methodology and timeline." [[377]](#footnote-378)377

In supporting the Trump initiatives, NRG joined several other companies. Some electrical co-operatives welcomed the Trump Administration action, believing that they would have more time to recoup costs already expended on expensive coal-fired plants. [[378]](#footnote-379)378Merchant generator Dynegy supported the Trump Administration's repeal of the CPP, but hoped that the Administration would replace it with "a regulatory solution that delivers environmental benefits, while maintaining the integrity of the competitive wholesale power market and preserving the ability of the power sector to deliver affordable and reliable energy." [[379]](#footnote-380)379

Nevertheless, most close observers of the industry have concluded that any changes implemented by the Trump Administration will have little effect on CO2 emissions trends. [[380]](#footnote-381)380According to the Energy Information **[\*205]**Administration, CO2 emissions in 2016 were 24 percent lower than in 2005 without the direct stimulus of CPP, well on the way to CPP's 32 percent reduction goal. [[381]](#footnote-382)381The head of the Rhodium Group, a prominent energy industry analyst, concluded that EPA's proposed CPP repeal did not "change any other market factors that are pushing coal out of the system." [[382]](#footnote-383)382In early 2017, his group published a report estimating that CO2 emissions from power plants would be 27 to 35 percent below 2005 levels by 2025, with or without the CPP. [[383]](#footnote-384)383He acknowledged, however, that the repeal could affect progress in the 12 to 21 states that were not on track to meet their CPP targets. [[384]](#footnote-385)384

*3. Customers Conserve and Purchase Renewable Energy*

Many major American companies have pledged to reduce their carbon footprints by improving energy conservation and purchasing more power from renewable resources. [[385]](#footnote-386)385Some companies have invested in renewable energy as a hedge against uncertain prices for fossil fuel-fired power. [[386]](#footnote-387)386Others have done so to improve their image with environmentally conscious consumers. [[387]](#footnote-388)387For example, Walmart's "Project Gigaton" has the goal of removing a billion metric tons of GHG from it supply chains by 2030. [[388]](#footnote-389)388Home Depot agreed to purchase sufficient electricity from the Los Mirasoles wind farm near McAllen, Texas, to power 100 of its stores for one year. [[389]](#footnote-390)389 **[\*206]**Other big-box stores, like Target, Ikea and Kohls have made similar commitments. [[390]](#footnote-391)390Major technology companies like Google, Apple, Amazon, and Microsoft have committed themselves to relying more heavily on renewable energy. [[391]](#footnote-392)391More than two-thirds of Fortune 100 companies and more than half of Fortune 500 companies have implemented renewable energy or sustainability polices with specific targets. [[392]](#footnote-393)392In an ironic sign of the times, the Kentucky Coal Museum is in the process of switching to solar power. [[393]](#footnote-394)393

The leaders of many American corporations strongly supported the CPP and were deeply disappointed with President Trump's withdrawal from the Paris Accord. [[394]](#footnote-395)394Around 100 companies and 80 university presidents announced that they would continue to implement existing GHG reduction programs, and come up with new programs to offset predictable emissions in homes and less environmentally conscious businesses. [[395]](#footnote-396)395Yet more than 25 of those companies also contributed a total of more than $ 3 million to the Republican Attorneys General Association, which was vigorously challenging the CPP in the D.C. Circuit. [[396]](#footnote-397)396It remains to be seen whether those companies will adhere to their commitments if the economy spins into another recession.

**[\*207]** *4. Environmental Group Resistance*

Environmental groups are determined to do whatever they can to prevent the Trump Administration from undoing the progress made during the Obama years. Days after the election, the Executive Director of NRDC announced that environmental groups would "build a wall of opposition" to stop Trump. [[397]](#footnote-398)397Greenpeace said it would be "fighting harder than ever for environmental, racial, and social justice." [[398]](#footnote-399)398The Sierra Club's generously funded Beyond Coal campaign is still pursuing its goal of retiring half of the coal-fired fleet by the end of 2017. [[399]](#footnote-400)399The head of the campaign is convinced that "[t]he coal industry is on the decline, and Donald Trump can't save it." [[400]](#footnote-401)400

Environmental groups are fiercely resisting the Trump Administration's efforts to repeal and replace the Obama Administration climate change initiatives and its efforts to steer the electric power industry toward greater reliance on coal. In addition to speaking out against the repeal of the CPP, they have promised to challenge it in court after it is finalized, and they have predicted that the challenges will result in years of litigation. [[401]](#footnote-402)401On the other hand, the groups did not oppose the indefinite stay of the litigation over the NSPS for power plants, because the standard remained in effect during the litigation. [[402]](#footnote-403)402They will no doubt challenge any replacement that is less stringent than the Obama standards.

Environmental groups strongly opposed the DOE resiliency proposal. [[403]](#footnote-404)403John Moore of NRDC argued that it was "absurd to pay the resources that are a root cause of climate change and more intense and severe weather" **[\*208]**in order to keep emitting greenhouse gases. [[404]](#footnote-405)404They will no doubt join consumer groups and the natural gas industry in challenging any future FERC regulation that intervenes in wholesale markets to steer consumer dollars toward coal-fired power plants.

Finally, we can expect environmental groups to object strongly to the many efforts to build a new coal-fired power plant and to monitor existing coal-fired plants carefully for changes that might result in emissions increases above the regulatory thresholds for "modifications" that would trigger new source review. For plants that undertake such modifications, the environmental groups will probably continue their longstanding practice of insisting that plant owners implement the "best available" technology for addressing CO2 emissions. In many cases that may consist of greater efficiency measures or converting to natural gas. But as CCS technologies become more effective and less expensive, these environmental groups may insist on at least partial capture and sequestration of CO2 emissions.

*5. State and Local Regulation*

The Trump Administration's pullbacks will bump up against the commitment of many states and cities, which are not greatly influenced by the federal government, to reduce GHG emissions. [[405]](#footnote-406)405After President Trump withdrew from the Paris Accords, the governors of several states and the mayors of many cities committed their governments to meet that agreement's GHG percentage reduction goals. [[406]](#footnote-407)406The "We Are Still In" coalition, composed of representatives of nine states, 125 cities and more than 1000 private sector corporations vowed to stay on the schedule set out in that agreement. [[407]](#footnote-408)407The Sierra Club estimated that the United States could achieve 60 percent of its Paris Accord commitments through the actions of states, cities and businesses. [[408]](#footnote-409)408

**[\*209]**The attorneys general of several states promised to challenge EPA's repeal of the Clean Power Plan in court. [[409]](#footnote-410)409States that had already made strong commitments to reducing GHG emissions continued on course in the absence of a federal program ensuring that every state would assume its fair share of the pollution reduction burden. When President Trump announced his decision to withdraw the country from the Paris Accord, governors from 12 states formed the U.S. Climate Alliance and pledged to make extra efforts to meet the U.S. commitment without the support of the federal government. [[410]](#footnote-411)410In September 2017, the Rhodium Group concluded that the alliance, which by then had grown to 14 states, had already created programs that would reduce CO2 emissions by 24 to 29 percent below 2005 levels by 2025, quite similar to the United States commitment of a 26 to 28 percent reduction under the Paris Accord. [[411]](#footnote-412)411Rhodium predicted that CO2 emission reductions across all states would decline by 27 to 35 percent from 2005 emissions by 2020 without the CPP, and would have declined even further if the plan had gone into effect. [[412]](#footnote-413)412

Despite the EPA's proposed repeal of the CPP, California adopted a plan that met its requirements. [[413]](#footnote-414)413And in 2016, it increased the goal of its renewable portfolio standard to a reliance on renewable resources for 50 percent of its electricity by 2030. [[414]](#footnote-415)414Not to be outdone, Hawaii upped its renewable portfolio standard to 100 percent by 2045. [[415]](#footnote-416)415Colorado's Democratic governor, John Hickenlooper, boasted that his state was planning to exceed **[\*210]**the CPP's goal for the state because companies were retiring power plants early and the state was encouraging the wind and solar industries. [[416]](#footnote-417)416In June 2017, New York Governor Andrew Cuomo announced a $ 1.5 billion Clean Climate Careers initiative with a goal of creating 40,000 clean energy jobs by 2020. [[417]](#footnote-418)417He signed an executive order requiring the state to get half of its electricity from renewable resources by 2030 and 80 percent by 2050. [[418]](#footnote-419)418And the state legislature enacted a $ 5 billion program to provide incentives for building solar, wind and other clean energy generators. [[419]](#footnote-420)419

The nine Northeastern states in the Regional Greenhouse Gas Initiative (RGGI) had reduced CO2 emissions by 37 percent from 2008 levels by 2016. [[420]](#footnote-421)420Initiated in 2009, that multi-state program established a successful cap-and-trade regime for CO2 emissions from power plants, but the price for allowances dropped dramatically with the election of Donald Trump. [[421]](#footnote-422)421In August 2017, the group agreed to bring about a reduction in GHG emissions from power plants by an additional 30 percent by 2030. [[422]](#footnote-423)422Virginia governor, Terry McAuliffe, signed an executive order requiring state regulatory agencies to come up with a plan to cap CO2 emissions from power plants with the goal of joining the RGGI. [[423]](#footnote-424)423Other attempts at assembling regional GHG reduction initiatives, however, have foundered. [[424]](#footnote-425)424

The efforts were not limited to blue states. The Republican governor of Iowa floated a plan for increasing utility-scale wind and solar projects. [[425]](#footnote-426)425 **[\*211]**Anticipating that a future administration will revive the CPP, the state of Arkansas, which challenged the CPP in court, urged electric utility companies to switch from coal to natural gas and renewables. [[426]](#footnote-427)426At the behest of local landowners, the Wyoming Environmental Quality Council, a board appointed by the Governor to oversee the Department of Environmental Quality in siting decisions, overruled the Department's decision to grant a permit to dig the state's first new coal mine in three decades. [[427]](#footnote-428)427

At the local level, the United States Conference of Mayors approved a resolution in June 2017 committing their cities to run on 100 percent renewable energy by 2035. [[428]](#footnote-429)428Former New York City mayor, Michael Bloomberg, announced that his philanthropy would spend $ 200 million over the next three years to support innovative approaches in cities to meet urban challenges, including climate disruption. [[429]](#footnote-430)429As of May 2017, 27 cities had agreed to transition to 100 percent renewable energy by 2035. [[430]](#footnote-431)430Pittsburgh, the city that President Trump mentioned in his withdrawal from the Paris Accords, was one of those cities. [[431]](#footnote-432)431The mayor was "appalled that the president used my city to justify his unacceptable decision." [[432]](#footnote-433)432

Several cities are already powering government buildings with renewable energy, and others have pledged to do so in the future. [[433]](#footnote-434)433Some cities are attempting to convert their transportation fleets to electric vehicles. [[434]](#footnote-435)434New York City came up with a plan to reduce GHG emissions that relied on more **[\*212]**stringent energy codes for buildings, rapid charging stations for electric vehicles, and insistence on renewable power in city procurement contracts. [[435]](#footnote-436)435

Many Appalachian, Rust Belt, Western and Southeastern states, however, remain heavily dependent on coal, and environmental agencies in those states are not likely to push the electric power industry toward lower coal use. [[436]](#footnote-437)436A few coal-dependent states are moving in the opposite direction by considering legislation to repeal renewable portfolio standards and end-use energy efficiency programs. [[437]](#footnote-438)437After the Trump EPA proposed to repeal the CPP, the Rhodium group predicted that 12 states would miss their CPP targets, and some, like West Virginia, would miss their targets by large amounts. [[438]](#footnote-439)438Those 12 states were responsible for 40 percent of the nation's CO2 emissions from power plants. [[439]](#footnote-440)439

Even with Michael Bloomberg's help, meeting the ambitious GHG reduction goals that many cities have established will be exceedingly difficult. Most cities do not currently have an accurate inventory of their GHG emissions or their current energy efficiency efforts to serve as a baseline against which to measure progress. [[440]](#footnote-441)440Bloomberg hoped to solve this problem by funding an initiative by the Rocky Mountain Institute and the World Resources Institute to measure the effectiveness of state, city and industry GHG reduction plans. [[441]](#footnote-442)441Many of the pledges presumed an active federal EPA and continued financial support from the federal government that is not likely to be forthcoming during the Trump Administration. [[442]](#footnote-443)442Except for cities that own their municipal utilities, cities do not have any **[\*213]**power over the grids from which they draw electricity. [[443]](#footnote-444)443At best, they can negotiate with generators to supply renewable power to municipal operations, but they lack authority to regulate what kind of power their citizens' purchase. [[444]](#footnote-445)444

Cities generally have the power to reduce emissions from their own operations and to provide tax incentives to install efficient appliances and solar panels. [[445]](#footnote-446)445The most effective regulatory tools available to cities are energy codes that specify energy efficiency measures for new residential and commercial buildings. [[446]](#footnote-447)446Most large cities have enacted such codes, but they vary in their stringency, and most codes are under-enforced. [[447]](#footnote-448)447The American Recovery and Reinvestment Act of 2009 required states accepting economic stimulus money to come up with plans to ensure 90 percent energy code compliance by 2017, but many cities do not have the resources to achieve that degree of compliance. [[448]](#footnote-449)448

Many of the cities that have pledged to adhere to the Paris Accord are in states with Republican governors and Republican-controlled legislatures. State legislatures have begun to limit the power of cities to promulgate regulatory requirements that are more stringent than those of state environmental agencies. [[449]](#footnote-450)449For example, in Texas, city ordinances regulating stationary sources of GHG emissions are subject to preemption by the Republican-controlled Texas Commission on Environmental Quality (TCEQ). [[450]](#footnote-451)450It is therefore unclear how cities in those states will achieve the promised reductions if their plans depend on exercising their regulatory powers.

**[\*214]** *6. Revitalizing Nuisance Suits*

Either a reversal of the endangerment finding or a failure to promulgate a replacement plan for existing power plants could give added impetus to nuisance lawsuits against owners of power plants. The Supreme Court has held that lawsuits brought by states under the federal common law of interstate pollution are preempted by the Clean Air Act's grant of authority to EPA to regulate GHG emissions. [[451]](#footnote-452)451If, however, EPA concludes that GHG emissions do not endanger public health or welfare or it simply abandons its efforts to regulate GHGs, the Court might be persuaded to allow such lawsuits to go forward. [[452]](#footnote-453)452The defendants in that litigation could, however, cite language in the Court's opinion to the effect that the mere grant of power to EPA to decide whether to regulate GHG emissions was enough to preempt federal common law litigation. [[453]](#footnote-454)453

The Court left open the question whether the Clean Air Act preempted nuisance claims brought under state common law. [[454]](#footnote-455)454Seizing on that ambiguity, three California cities and two counties have filed lawsuits against many large GHG emitters under that states common law. [[455]](#footnote-456)455The lawsuits are quite compatible with the Clean Air Act's "floor preemption" provision, which allows states to regulate stationary sources more stringently than that statute requires. [[456]](#footnote-457)456If EPA abandons the field, state courts may feel a greater responsibility for entertaining such lawsuits, despite the difficulties they would encounter in managing them and in coming up with appropriate relief. State judges will no doubt be reluctant to take on these extensive cases, but they do have a duty to decide the common law claims of citizens who have been wronged by others. [[457]](#footnote-458)457Fearing such lawsuits and the uncertainties they entail, many electric power companies are urging EPA to replace the **[\*215]**CPP with a program capable of satisfying the courts that EPA intends to address climate disruption. [[458]](#footnote-459)458

*B. Effect on the Coal Industry*

*1. Introduction*

The coal industry was on a rather steep decline at the outset of the Trump Administration. The proportion of the nation's electricity supplied by coal fell from 51 percent in 2008 to 31 percent in 2016. [[459]](#footnote-460)459During that time, electric power companies retired 59 gigawatts (17 percent) of the country's coal-fired capacity and switched 13 gigawatts (4 percent) to natural gas. [[460]](#footnote-461)460Electric power companies had by early 2017 announced that they would be retiring or converting another 51 gigawatts (18 percent of currently operating coal-fired capacity), [[461]](#footnote-462)461and more than 1000 coal mines had closed since the beginning of the Obama Administration. [[462]](#footnote-463)462When President Trump was elected, three of the nation's largest coal companies were emerging from bankruptcy. [[463]](#footnote-464)463The coal industry and the Trump Administration said that its initiatives would bring about a reversal in the coal industry's fortunes. [[464]](#footnote-465)464That assessment, however, does not appear to comport with the facts on the ground.

*2. No Rush to Coal with New Coal-Fired Power Plants*

There is not likely to be another "rush to coal" to build new coal-fired power plants as there was during the first few years of the George W. Bush **[\*216]**Administration, when upwards of 200 new coal-fired power plants were on the drawing boards. [[465]](#footnote-466)465First, even if EPA repeals the NSPS for GHG emissions from fossil fuel-fired power plants, the BACT and LAER requirements for emissions of new coal-fired power plants will require expensive technologies for both conventional pollutants and CO2 that make building a new gas-fired plant expensive compared to a solar array or wind farm. Electric power companies are well aware of the risk of future environmental regulation, and they will factor that risk into any plans to build a power plant with a 30-to-50 year lifetime. [[466]](#footnote-467)466The regulatory uncertainty over CO2 emissions will take new coal-fired power plants off the table until Congress or EPA achieves a lasting regulatory resolution of the issue. [[467]](#footnote-468)467Second, in many areas of the country, gas is cheaper than coal. [[468]](#footnote-469)468Unless Congress or FERC provides an exceedingly high subsidy to coalfired plants, the price disparity is likely to remain. Third, renewables are rapidly becoming cheaper than coal, at least as long as the tax advantages remain in place. [[469]](#footnote-470)469

Cost overruns and delays plagued all of the last few coal-burning "mega-projects," like Duke Energy's Edwardsport Power Station in Indiana, Prairie State Energy's Prairie State Station in Southern Illinois, and Southern Company's notorious Plant Ratcliffe in Kemper County, Mississippi, which ultimately abandoned coal for natural gas. [[470]](#footnote-471)470Power4Georgians' planned 850 megawatt Plant Washington is currently on hold because of uncertainties surrounding federal requirements for CO2 emissions, and it is unclear whether state regulators will grant its permit extension request. [[471]](#footnote-472)471The only mega-projects in the works these days are large combined-cycle natural gas-fired turbines, wind farms, and utility-scale solar arrays. [[472]](#footnote-473)472In 2016, two-thirds of all new generating capacity in the country consisted of renewables, and natural gas made up nearly all of the remaining third. [[473]](#footnote-474)473 **[\*217]**No power company was interested in investing in a new coal-fired plant. [[474]](#footnote-475)474The only coal-fired power plant under construction in the fall of 2017 was a tiny combined heat and power facility at the University of Alaska in Fairbanks. [[475]](#footnote-476)475

*3. No Zombie Coal-Fired Plants*

Electric power companies are not likely to fire up mothballed or retired coal-fired plants, even in the unlikely event that coal becomes less expensive than natural gas and renewables. [[476]](#footnote-477)476In most cases, the plants would have to obtain new permits, and that could trigger NSR and its BACT requirement. And environmental groups would almost certainly contest those permits in state agencies and courts. Moreover, efforts to recover the cost of bringing retired plants back to life would probably encounter stiff resistance from consumer and environmental groups in state PUCs.

*4. Temporary Life Extensions for Currently Operating Coal-Fired Plants*

The best that coal advocates can hope for is that the owners of the coal-fired plants that are currently operating, many of which were built in the 1980s and contain second-generation pollution controls, will do what it takes to keep the plants running for as many years as possible. The Department of Energy's Energy Information Institute in early 2017 calculated that repealing the Clean Power Plan could at best stabilize demand for coal through 2030 instead of a steady decline to near zero consumption if the CPP remained in effect. [[477]](#footnote-478)477However, companies will have to be very careful to craft life extension projects to come within the "routine maintenance, repair and replacement" exception to NSR. Otherwise, they will have to install the best available technology for limiting CO2 emissions, and that could be quite expensive as CCS technologies become commercially available.

**[\*218]** *5. Subsidies to Power Companies*

In rejecting DOE's grid resiliency proposal, FERC undid one of the Trump Administration's most important attempts to bring about a revival of the coal industry. [[478]](#footnote-479)478Had FERC approved the proposal, it is not clear that a large subsidy to power companies would have worked its way through to the coal industry. [[479]](#footnote-480)479As previously noted, plant owners seeking to take advantage of the subsidy would have had to go to the expense of maintaining larger stockpiles of coal. Since the subsidies for stockpiling coal would not have made a plant's electrical output any more competitive in the wholesale marketplace, power companies might well have pocketed the subsidies and run their plants at the same levels without burning more coal. [[480]](#footnote-481)480

*6. Conclusions*

Coal experienced a slight rebound during the first quarter of 2017, but quickly lost ground during the unseasonably warm fall. [[481]](#footnote-482)481When President Trump in early June 2017 boasted of "a big opening of a brand-new mine," he was alluding to the Acosta Deep Mine. [[482]](#footnote-483)482Corsa Coal decided to dig that mine in September 2016 to extract metallurgical coal for use in making steel, a use that would be unaffected by the Trump regulatory rollbacks. [[483]](#footnote-484)483Corsa's head engineer said the decision to open the mine had nothing to do with the election. [[484]](#footnote-485)484

When Columbia University's Center on Global Policy modeled the impact of the pullbacks mandated by President Trump's Executive Order, it concluded that "for the next few years, natural gas prices and, to a lesser extent, renewable energy costs will play a far greater role in determining U.S. **[\*219]**coal consumption than President Trump's deregulatory agenda." [[485]](#footnote-486)485The impact could be "material" by 2025 "but could still be overwhelmed by the impact of cheaper natural gas." [[486]](#footnote-487)486In the best-case scenario for coal, in which natural gas prices more than doubled between 2017 and 2025, demand for coal would "plateau at 19 percent below 2007 levels." [[487]](#footnote-488)487

Only one of the electric power company executives that testified before the Energy Subcommittee of the House Committee on Energy and Commerce in July 2017 believed that regulation had much to do with retirements of coal-fired power plants. [[488]](#footnote-489)488The rest cited low-cost natural gas and renewable energy. [[489]](#footnote-490)489Former FERC chairman Joseph Kelliher testified that coal-fired power plant retirements were "primarily driven by economics and not by environmental regulation." [[490]](#footnote-491)490Since repealing the CPP will have little effect on the economics of the electric power industry, it will not likely bring about an increase in coal use in the nation's power plants. In a March 2017 survey of utility company executives, a plurality said their outlook for coal was better after Executive Order 13783, but the vast majority of respondents allowed that their companies would not be drawing more power from coal plants. [[491]](#footnote-492)491Even super coal enthusiast Robert Murray opined that he did not know "how far the coal industry can be brought back." [[492]](#footnote-493)492At most, he expected that repealing the CPP would "change the trajectory at which [CO2 emissions] would decline." [[493]](#footnote-494)493

**[\*220]** *C. Effect on Jobs*

The president's cruelest promise in ordering EPA to rescind Obama Era protections was his guarantee that coal miners were going back to work. During the 2016 campaign, he told miners that when he was elected "you are going to be working your asses off." [[494]](#footnote-495)494When he signed Executive Order 13783, he told the coal miners that the White House had brought in for props: "Do you know what this says? You're going back to work." [[495]](#footnote-496)495At a March 2017 rally in Kentucky, Trump promised that Executive Order 13783 would "save our wonderful coal miners from continuing to be put out of work." [[496]](#footnote-497)496Many coal miners believed him. [[497]](#footnote-498)497For years, they had been told by their employers, local politicians, talk radio hosts, and Fox News that EPA regulations were the primary causes for the coal industry's decline and the resulting "economic plague" that had swept through Appalachia. [[498]](#footnote-499)498It therefore made sense that repealing the Obama era regulations on the electric power industry would bring about a revival of the industry. Robert Murray praised Trump's actions as "vital to the American coal industry, to our survival, and to getting some of our coal families back to work." [[499]](#footnote-500)499

In reality, there is very little likelihood that the Trump Administration's initiatives will deliver on those promises. [[500]](#footnote-501)500Even if all of the proposals are finalized and survive judicial review, the decline in coal mining jobs may be slowed, [[501]](#footnote-502)501but there will be no dramatic increase in employment in the coal mining industry. [[502]](#footnote-503)502First, as discussed above, there likely will not be a rush to build new coal-fired power plants during the Trump Administration. The administration is also rolling back regulations that affect the price and availability of natural gas, like the EPA's rule **[\*221]**regulating methane emissions from natural gas operations and the Department of Interior's efforts to pull back a regulation limiting flaring of natural gas in remote locations. To the extent that these rollbacks result in cheaper natural gas, the demand for coal will continue to suffer. [[503]](#footnote-504)503

Second, the coal mining industry has changed in ways that require fewer workers to produce the same amount of coal. Underground mining has become increasingly mechanized. [[504]](#footnote-505)504Additionally, enormous surface mines in the Powder River Basin and mountaintop mining in Appalachia require huge machines but fewer people. [[505]](#footnote-506)505Even if the coal industry thrives, employment is not likely to increase significantly, because the move toward letting machines do more of the work is consistent with the coal industry's long-term business model of "producing more coal with fewer workers." [[506]](#footnote-507)506

Third, coal mining jobs are regionally important, but nationally insignificant. Coal companies employed around 66,000 miners in 2015, down from around 88,000 in 2008. [[507]](#footnote-508)507By contrast, about 370,000 people work for solar companies, most of whom are involved in installation. [[508]](#footnote-509)508In fact, fewer people work as coal miners than work for the fast food chain, Arby's. [[509]](#footnote-510)509This is not to suggest that we should allow the marketplace to sort out what happens to the miners and workers in supporting industries in Appalachia and the Powder River Basin. Rather, we should come up with training programs and do what we can to bring a different sort of economic development to these areas.

Unfortunately, the Trump Administration is moving in exactly the opposite direction. The president's proposed budget for fiscal year 2018 eliminated funding for the Appalachian Regional Commission, a $ 146 million state-federal partnership designed to create economic opportunities for the residents of the 13 Appalachian states. [[510]](#footnote-511)510Between October 2015 and January 2017, the program sponsored 662 projects that created or maintained more than 23,000 jobs and trained more than 49,000 residents. The proposed budget also eliminated several other programs that were part of President Obama's **[\*222]**Partnerships for Opportunity and Workforce and Economic Revitalization (POWER) initiative, which was designed to help communities dependent on coal or coal-fired power plants to diversify their economies and lower unemployment. [[511]](#footnote-512)511Rebuffing protests by senators and representatives in areas the programs were designed to help, [[512]](#footnote-513)512the administration explained that it was offering sufficient aid to highly impacted communities by cutting regulations and streamlining permit approvals. [[513]](#footnote-514)513 [[514]](#footnote-515)514Some Trump supporters in the region are willing to suffer the cuts because they believe that the president will bring back the coal jobs as he promised on multiple occasions. [[515]](#footnote-516)515

So long as Senator Mitch McConnell (R-Kentucky) remains the Senate majority leader and Harold Rogers (R-Kentucky) remains a member of the House Appropriations Committee, however, the commission will probably be funded, yet at a reduced level. [[516]](#footnote-517)516An amendment to the commission's reauthorization bill to eliminate its funding in April 2017 failed by a vote of 25-71. [[517]](#footnote-518)517However, the House Appropriations Committee approved an appropriation for the Appalachian Regional Commission that reduced its budget by 14.5 percent. [[518]](#footnote-519)518

Most observers of the coal industry do not believe that Trump initiatives will put many miners back to work. The Energy Information Administration concluded in March 2017 that, at best, rescinding the CPP might save some jobs in the Western United States. [[519]](#footnote-520)519In its 2017 U.S. Coal Outlook, the Institute for Energy Economics and Financial Analysis bluntly concluded that "[p]romises to create more coal jobs will not be kept" and "the industry will continue to cut payrolls." [[520]](#footnote-521)520Indeed, an analysis of the cost of rescinding **[\*223]**the CPP prepared by Environmental Entrepreneurs (E2) concluded that it would reduce the gross domestic product by $ 52 billion by 2030 and result in the loss of 560,000 new jobs. [[521]](#footnote-522)521Finding that it is highly unlikely that the Trump Administration's deregulatory initiatives will bring about a revival of the coal industry with lots of high paying jobs, the Columbia University Center on Global Policy urged policymakers "to be honest about these facts--about the causes of coal's decline and unlikeliness of its resurgence --rather than offer false hope that the glory days can be revived." [[522]](#footnote-523)522

*D. Effect on the Natural Gas Industry*

The Trump Administration initiatives have thus far had little impact on the natural gas industry. The industry was not pleased with President Trump's efforts to aid its competitors in the coal industry, and it was pleased to see FERC reject DOE's proposed subsidy for power plants that stockpile coal. [[523]](#footnote-524)523Since every FERC member who has spoken out on the proposal has favored a fuel-neutral approach to regulation of wholesale markets, it seems unlikely that that agency will promulgate a rule that gives the coal industry a significant advantage over the natural gas industry in the future. Regarding the CPP, DOE's Energy Information Administration predicted in September 2017 that natural gas consumption will increase at an average of 1.4 percent per year through 2040, with or without the CPP. [[524]](#footnote-525)524

Of perhaps greater concern to natural gas producers is the renewed determination of local and national environmental groups to vigorously oppose new natural gas pipelines and other infrastructure, which could slow down or halt projects needed to get gas from wells to power plants. [[525]](#footnote-526)525The goal of Sierra Club's "Beyond Natural Gas" campaign is to "go after gas-fired plants with the same vengeance they've used to force the retirements **[\*224]**of hundreds of coal facilities." [[526]](#footnote-527)526If that campaign is nearly as successful as the "Beyond Coal" campaign, it will become much more difficult to build new gas-fired plants, which are currently subject to the Obama Administration's NSPS and to the additional BACT requirement in PSD areas.

*E. Effect on Renewables*

Developers of renewable energy are very concerned about the impact of the Trump Administration initiatives on their industry. A spokesperson for Ideal Energy of Fairfield Iowa predicted that the CPP repeal would "have extreme impact on everything that we've built up." [[527]](#footnote-528)527Other knowledgeable observers of the industry, however, do not share in that negative assessment. In an April 2017 nationwide survey of electric utility company professionals, 80 percent expected renewable energy to increase moderately or significantly in their service areas over the next decade. [[528]](#footnote-529)528While EPA regulations may have had a modest influence on the trend of power companies toward renewable energy, most observers have concluded that the growth of renewable power is far more dependent on continued tax incentives and state renewable portfolio standards than on the survival of the Clean Power Plan. [[529]](#footnote-530)529In June 2016, the Energy Information Administration predicted that renewable power would increase from less than 300 to more than 400 gigawatts by 2040 with or without the Clean Power Plan. [[530]](#footnote-531)530An NRDC report reached a similar conclusion. [[531]](#footnote-532)531In May 2016, the North American Electric Reliability Council concluded that due to state requirements and general demand, renewable capacity would increase by 110 gigawatts by 2030, with or without the Clean Power Plan. [[532]](#footnote-533)532

In Texas, a fierce opponent of the CPP, it was clear by the end of 2016 that the state would meet the CPP's goal of 32 percent reduction in CO2 **[\*225]**emissions by 2030, even if the CPP were rescinded, because of an enormous influx of wind-based electricity from the high plains of that state. [[533]](#footnote-534)533This is in a state that would be the world's sixth largest CO2 emitter if it were a separate country. [[534]](#footnote-535)534The same was true in many states that were vigorously challenging the CPP in the D.C. Circuit. [[535]](#footnote-536)535Even in Scott Pruitt's own state of Oklahoma, the prominent utility company, Public Service Company of Oklahoma, was on course to supply 30 percent of its electrical power output with renewable resources by 2018. [[536]](#footnote-537)536Interestingly, most renewable power facilities were being built in Republican congressional districts. [[537]](#footnote-538)537

The 30 percent tariff that President Trump imposed on imported solar cells will cause an increase in the price of solar cells, 95 percent of which are imported. [[538]](#footnote-539)538Electric power companies will have a reduced incentive to invest in renewables, and banks may be less inclined to support renewable investments. [[539]](#footnote-540)539While this might not have a huge impact on the domestic renewables industry or the overall move away from coal, [[540]](#footnote-541)540it could have a devastating effect on some small solar installation companies. [[541]](#footnote-542)541And to the extent that Trump's tariff puts renewable energy companies out of business, they will have a negative impact on jobs in an industry that has been one of the largest sources of jobs in the current American economy. [[542]](#footnote-543)542

V. CONCLUSIONS

Most presidential elections feature promises of change from one side or the other. The change in environmental policy that followed the 2016 election was more radical than any election in this author's experience. A cautiously progressive administration, committed to forcing the electric power industry **[\*226]**to confront the looming catastrophe of climate disruption in the face of congressional gridlock, was replaced by an administration that doubted whether human activities contributed to global warming, and was committed to undoing every reform of its predecessor. The Trump Administration may well succeed in repealing the Clean Power Plan and the power plant NSPS, either directly in its repeal initiative or indirectly through simple failure to enforce their requirements. It is not at all clear, however, that those actions will have a significant impact on the electric power industry, the coal industry, or jobs in those industries. Although it is still very early in the implementation process, the Trump Administration initiative has had no perceptible effect on the coal and electric power industries or on their workers and the communities in which they live. [[543]](#footnote-544)543

There are good reasons for optimism on the part of those who believe the science underlying climate disruption and worry about the threat to the planet posed by CO2 emissions from fossil fuel-fired power plants. Former New York Mayor Michael Bloomberg believes that "forces beyond Washington" have reached such a "critical mass" that "we should be more optimistic than ever about our ability to lead--and win--the fight against climate change." [[544]](#footnote-545)544President Trump's decision to withdraw from the Paris Accords did not precipitate a rash of withdrawals by other nations as had been predicted. [[545]](#footnote-546)545It merely resulted in the United States joining Syria and Nicaragua as "global renegades." [[546]](#footnote-547)546The United States will remain a party to the Paris Accords until November 2020. [[547]](#footnote-548)547If President Trump is not re-elected, his successor could rejoin the agreement in 30 days and undertake an ambitious program for controlling CO2 emissions from power plants in an attempt to meet the Paris Agreement's 2025 goal. [[548]](#footnote-549)548The United States may meet its commitment under the Paris Accords to reduce GHG emissions to 17 percent below 2005 levels by 2020, but it will probably not meet its commitment **[\*227]**to reduce GHG emissions to 26-28 percent below 2005 levels by 2025. [[549]](#footnote-550)549In the meantime, the countries that remain in the agreement are presumably working diligently toward their voluntary goals.

It is unlikely that Congress will amend the Clean Air Act to overturn the Supreme Court's holding that GHGs are pollutants. [[550]](#footnote-551)550It remains to be seen whether Administrator Pruitt will attempt to rescind Administrator Jackson's finding that GHG emissions endanger public health and the environment. Even if the EPA follows through with Administrator Pruitt's red team-blue team exercise, the agency will have a steep hill to climb to overcome the accumulated scientific evidence that GHG emissions cause climate disruption. The statute requires the EPA to regulate a pollutant if it "may reasonably be anticipated to endanger" public health. Even if uncertainties remain about the nature of the relationship between anthropogenic emissions and global warming, the agency is obliged under this precautionary language to take action to protect people and the environment. [[551]](#footnote-552)551

Another encouraging sign is that renewable energy companies are located in areas like Wyoming and West Virginia, and they are offering training to coal miners on how to install wind turbines and rooftop solar panels. [[552]](#footnote-553)552Even in coal-dependent states, public utility commissions driven by cost considerations may put pressure on companies to repower or retire old coal-fired plants. [[553]](#footnote-554)553President Trump's solar tariff may slow investments in solar power for a year or two, but renewable energy should be on the rise over the long term. In a state that emits more CO2 than any other by a considerable distance, wind energy occasionally provides half of the electricity consumed in Texas. [[554]](#footnote-555)554Allowing the tax credits for renewable installations to lapse will undoubtedly hurt the renewables industry, but it will not stop the remarkable technological innovation that is making wind and solar power cheaper than coal, even without the subsidy.

**[\*228]**There are also good reasons to be pessimistic about climate disruption in the future. While the electric power industry's transformation will continue if the EPA repeals the CPP, the Obama regulation was a critical backstop against regression toward coal in states that were disinclined to regulate CO2 emissions. Some analysts believe that the EPA's repeal of the CPP will, if finalized, slow the rate of CO2 emissions reductions nationwide, especially in states like Georgia and Texas that refused to implement the CPP. [[555]](#footnote-556)555An April 2017 report by Climate Advisors, a consulting company, concluded that CO2 emissions in the U.S. would reverse their downward trend and flatten out or increase by 2020 if the CPP does not go into effect. [[556]](#footnote-557)556

The *Wall Street Journal*'s editorial page announced in mid-August 2017 that coal was making a comeback as exports were on the rise and natural gas prices had increased 63 percent between March 2016 and August 2017. [[557]](#footnote-558)557The editors further noted that the coal companies emerging from the recent bankruptcies were "leaner and more competitive" than in the past. [[558]](#footnote-559)558While that assessment may be overly optimistic from the coal industry perspective, the Trump Administration initiatives may well cause an increase in reliance on currently underutilized coal-fired power plants and a corresponding increase in CO2 emissions from the electricity generation sector.

Efforts by states to fill the void left by inaction at the federal level may founder on preemption grounds. The Supreme Court has held that lawsuits brought by states under the federal common law of nuisance against large CO2 emitters are preempted by the Clean Air Act. The defendants in the recent nuisance actions brought by cities and counties under California's common law will no doubt argue that state common law is likewise preempted by the EPA's regulation of CO2 emissions or its decision not to regulate those emissions. A federal district court held that the City of Albuquerque's changes to its building code to require more efficient hot water heaters and heating, ventilation, and air conditioning equipment were preempted by DOE's standards. This does not bode well for local regulation of those energy-consuming products. [[559]](#footnote-560)559Although preemption does not pose a serious problem **[\*229]**for state and local regulation of power plants in their state implementation plans, [[560]](#footnote-561)560it does threaten other local actions aimed at increasing energy efficiency of products that are sold in national markets. [[561]](#footnote-562)561

At the end of the day, the efforts by states and cities, while commendable, will probably not achieve the short-term goals for the United States established in the Paris Accords. Only 14 states are currently members of the Climate Alliance. [[562]](#footnote-563)562Cities participating in the "We Are Still In" initiative account for 51 percent of the United States population but only 36 percent of the nation's CO2 emissions. [[563]](#footnote-564)563It is unlikely that the efforts by these states and cities alone can make up for the states and cities that are not committed to the Paris Agreement's goals or are downright hostile to them. [[564]](#footnote-565)564Only if voluntary efforts by corporate and residential consumers reduce demand to much lower levels in the next seven years are we likely to meet the Paris Agreement's near term goals. That would by no means guarantee that the United States will contribute its share of the GHG reductions needed to meet the long-term goal of preventing global temperatures from rising 1.5 degrees centigrade above historical levels. [[565]](#footnote-566)565

If we are going to meet the Paris Agreement goals, GHG emissions nationwide must decrease by around 5 percent per year. This requires a halt to all new fossil fuel-fired power plants, and the shutdown of many existing fossil fuel-fired power plants before the end of their planned lifetimes. [[566]](#footnote-567)566To make up the shortfall, the electric power industry will have to make massive investments in renewable power that match or exceed the large investments of the past few years. At the very least, the Trump Administration's actions have created uncertainty, and uncertainty hampers such large-scale investment. [[567]](#footnote-568)567That, by itself, could be enough to slow the movement away **[\*230]**from coal and the corresponding reductions in GHG emissions. The negative effect on emissions reductions will be much greater if prices for natural gas increase in a market that is notoriously volatile.

In the meantime, CO2 levels in the atmosphere continued to rise 3 ppm in both 2015 and 2016, the largest increases since the Mauna Loa Baseline Atmospheric Observatory began measuring those levels in the 1950s. [[568]](#footnote-569)568A draft of the EPA's quadrennial National Climate Assessment approved by a peer review group assembled by the National Academies of Sciences concluded that even if all anthropogenic GHG emissions ceased immediately, global temperatures would rise another 0.5 degrees Fahrenheit by the end of the century. [[569]](#footnote-570)569

It seems clear that we will not meet the Paris Agreement's long-term goal without active intervention from the federal government. [[570]](#footnote-571)570Without the threat of the EPA taking over their permit programs, coal-dependent states are not likely to put pressure on owners of coal-fired plants within their borders to retire them or convert them to gas. [[571]](#footnote-572)571Yet it is not at all clear that restrictions on GHG emissions in progressive states that want to protect their citizens from climate disruption will be sufficient to meet the near term Paris Agreement goal of a 26 to 28 percent reduction in GHG emissions by 2025. If we do not meet that modest goal, it will be very difficult, if not impossible, to prevent global temperatures from rising to catastrophic levels.

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