

**From:** POLITICO Pro Energy  
**To:** [megan\\_bloomgren@ios.doi.gov](mailto:megan_bloomgren@ios.doi.gov)  
**Subject:** [Susp. Phishing] Morning Energy, presented by the National Wildlife Federation: Seismic shift to hit EPA with Pruitt confirmation — Smith serves new subpoenas over Exxon probes — Shimkus says major Clean Air Act rewrite not coming  
**Date:** Friday, February 17, 2017 4:50:09 AM

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By Anthony Adragna | 02/17/2017 05:46 AM EDT

*With help from Alex Guillén, Nick Juliano, Darius Dixon, Ben Lefebvre and Esther Whieldon*

**MR. PRUITT GOES TO EPA:** Scott Pruitt is set to be confirmed today as the 14<sup>th</sup> EPA administrator, marking a massive change in the agency's direction and ushering in a new era of regulatory rollbacks. A confirmation vote is expected around 1:00 p.m. — over howls of protest from Democrats clamoring to see copies of emails Pruitt and his staff exchanged with fossil fuel lobbyists, Republican donors and others while he was Oklahoma's attorney general. A state judge Thursday afternoon ordered Pruitt to cough up as many as 3,000 emails by Tuesday in response to a liberal watchdog's longstanding public records request. As Democrats planned to hold the Senate floor all night speaking against the nomination, top Environment and Public Works Committee Democrat [Tom Carper](#) said the court's ruling "should finally give my Republican colleagues pause" and that it would "wholly irresponsible to vote on this nominee this week knowing that we don't have the full picture" of potential conflicts of interest Pruitt would bring to the job.

**Anyone who has been paying attention** to President Donald Trump's campaign or transition knows what to expect from Pruitt: A major reduction in EPA's emphasis on federal oversight in favor of giving more control to the states; a severely reduced, if not reversed, focus on climate change and other clean air and water initiatives; and long-term moves to decrease funding and staff.

**Welcome, boss:** Meanwhile, EPA employees are already responding with unhappiness about the new jefe. A few dozen current employees publicly protested his nomination, and 773 former EPA employees have signed onto [a letter](#) opposing him. Unions organized drives for workers to call and urge their senators to vote against him, a first, [according to](#) the New York Times. And at least a few EPA employees have started using an encrypted app in case they need a private way to communicate, drawing ire from House Republicans who say they are skirting recordkeeping laws.

**What's next:** It has long been expected that once Pruitt is installed, Trump will sign one or more executive orders directing the agency to roll back climate change work, limit its enforcement powers or otherwise apply a lighter touch to regulation. Pruitt has a major to-do list, including shifting gear in the dozens of ongoing lawsuits challenging EPA rules and actions, starting the years-long process to repeal regulations like the Clean Power Plan and searching for the dozens of political staff required to operate EPA. Trump leaves for South Carolina this morning and Vice President Mike Pence heads to Europe in the morning as well. ME hears EPA is preparing for a Tuesday swearing in for Pruitt, but plans remain up in the air.

**Sen. Jim Inhofe (R-Okla.),** a close Pruitt ally, said he and Pruitt have had many discussions in the past about the challenges EPA presents to the agriculture and energy industries. "But not since he's gotten this close, I don't think he's thinking about it now," Inhofe told ME Thursday evening, explaining that he had not been given a heads up on what Pruitt's first order of

business would be. "He wants to get properly staffed, and then watch him roll."

**WE MADE IT TO FRIDAY, EVERYONE!** I'm your host Anthony Adragna, and congratulations to the Nature Conservancy's Tiffany Hartung for identifying North Dakota Gov. Lynn J. Frazier as the first in history to be recalled. Your end-of-the-week puzzler: Who was the first president with a doctorate? Send your tips, energy gossip and comments to [aadragna@politico.com](mailto:aadragna@politico.com), or follow us on Twitter [@AnthonyAdragna](https://twitter.com/AnthonyAdragna), [@Morning\\_Energy](https://twitter.com/Morning_Energy), and [@POLITICOPro](https://twitter.com/POLITICOPro).

**PROGRAMMING NOTE** — Due to the President's Day recess, Morning Energy will not publish on Monday, Feb. 20. Our next ME will publish on Tuesday, Feb. 21. Please continue to follow Pro Energy issues [here](#).

**ANOTHER ONE BITES THE DUST:** An Interior rule meant to protect streams from mountaintop removal coal mining is no more after Trump signed a Congressional Review Act resolution nullifying it Thursday afternoon, Pro's Alex Guillén [reports](#). "The mines are a big deal. I've had support from some of you folks right from the very beginning and I won't forget it," the president said at the White House. With the Stream Buffer Rule axed, Interior reverts back to the original 1983 regulation the Obama administration previously said was out of date and inadequate to protecting waterways and aquatic life.

**Spotted at the signing:** Sens. [Mitch McConnell](#), [Rand Paul](#) (R-Ky.), [Joe Manchin](#) (D-W.Va.), [Heidi Heitkamp](#) (D-N.D.), [John Hoeven](#) (R-N.D.) and [Shelley Moore Capito](#) (R-W.Va.). Reps. [Evan Jenkins](#) (R-W.Va.), [David McKinley](#) (R-W.Va.), [Alex Mooney](#) (R-W.Va.), [Kevin McCarthy](#) (R-Calif.), [Jim Jordan](#) (R-Ohio), [Bill Johnson](#) (R-Ohio), [Morgan Griffith](#) (R-Va.), [Rob Bishop](#) (R-Utah), [Jim Renacci](#) (R-Ohio), [Doug Lamborn](#) (R-Colo.) and [Bob Gibbs](#) (R-Ohio). And Murray Energy Corp. CEO Bob Murray and the National Mining Association's Hal Quinn.

**Funny moment:** As has become his custom, Trump invited members to gather around for a picture as he displayed the signed resolution. He motioned for Heitkamp to come closer "even though she's sort of a Democrat."

**House lawmakers**, meanwhile, cleared another CRA ([H.J. Res. 69](#)) Thursday afternoon on a 225-193 vote that would overturn an Interior regulation limiting hunting practices in Alaskan national wildlife refuges. Five Democrats backed it, while ten Republicans voted no.

**NUCLEAR THROWDOWN COMING:** Efforts by New York and Illinois to provide economic support to nuclear plants are leaving FERC with a menu of bitter options. The state programs are running headlong into FERC's regulation of power markets, forcing the agency to either intervene and start a jurisdictional fight with state regulators, or to accept the subsidies that could put fossil-fuel power plants at risk if power prices keep falling, Pro's Esther Whieldon and Darius Dixon [report](#).

**\*\* A message from the National Wildlife Federation:** America's 40 million hunters and anglers depend upon our nation's public lands. Some in Congress want to overturn National Monument protections or even sell-off the places Americans hunt, fish, hike, and camp. Join us as we urge President Trump and Congress to defend America's public lands for future generations: <http://bit.ly/2lhONxJ> \*\*

**PROBING THE EXXON PROBES:** Rep. [Lamar Smith](#) is trying again to get the

Massachusetts and New York attorneys general to hand over documents relating to their investigations into Exxon Mobil's history of climate change research and advocacy. The House Science, Space and Technology Committee chairman late Thursday subpoenaed the AGs for the second time in as many congresses, seeking emails and other communications between named individuals in the AG offices and environmental groups. "They're more narrowly tailored this time around," a committee aide said of the new subpoenas. "In our prior subpoenas we just named groups - the New York AG office, Greenpeace, etc. This time we've named particular individuals." The aide declined to say from which particular people it was seeking information.

**Massachusetts Attorney General Maura Healey was not amused** by the latest round of incoming. "Our office does not intend to comply or yield to further harassment, and we join Ranking Member [[Eddie Bernice Johnson](#)] in urging the Chairman to find something more productive to do," Chloe Gotsis, a spokeswoman for Healey's office said in a prepared statement. New York Attorney General Eric Schneiderman's office said his investigation would continue. "With Exxon's former CEO — a key figure in Attorney General Schneiderman's fraud investigation — now serving as President Trump's Secretary of State, we're not surprised that Exxon's lobbyists were able to buy another flimsy House subpoena," NYAG press secretary Amy Spitalnick said in a statement.

**TALKING 'BOUT MY REGULATION:** Trump touted his regulatory executive order requiring the elimination of two old rules for every new one issued (that [some have called](#) more flash than substance) during his sprawling press conference Thursday. "Nobody's ever seen regulations like we have," the president said. "And I want regulations because I want safety, I want environmental — all environmental situations to be taken properly care of. It's very important to me. But you don't need four or five or six regulations to take care of the same thing."

**SHIMKUS: MAJOR CLEAN AIR ACT REWRITE NOT COMING:** Expect the Energy and Commerce Environment Subcommittee to take "rifle shots" at the Clean Air Act rather than pursuing a massive rewrite, Chairman [John Shimkus](#) told reporters. "I would not expect to see me drop a Clean Air Act reauthorization," he said. Some of those immediate steps will include bills altering the agency's ozone program and possible tweaks to the Renewable Fuel Standard, according to the Illinois Republican. E&C Vice Chairman [Joe Barton](#) said at a hearing earlier Thursday said he'd like to "take a look at" EPA's endangerment finding, which Shimkus said he also "questions."

**Flying blind:** Shimkus said he's had no contact with the Trump administration to date and has never met Pruitt, but believes the incoming EPA chief "will try to balance regulations and development."

**Won't ax EPA:** There's been a lot of chatter about a ten-word bill ([H.R. 861](#)) from freshman Rep. [Matt Gaetz](#) to completely eliminate EPA by 2019, but Shimkus won't support that idea. "EPA has a role," he told ME. "We have to have an agency that remediates and helps resolve [Superfund sites], and that's EPA."

**OPEN TO ADJUSTMENT:** Rep. [Kevin Cramer](#) (R-N.D.) says he is open to a border adjustment in tax reform, although he acknowledged the proposal could harm oil refiners if it was not designed properly. Cramer represents the nation's No. 2 oil producing state that is home to two oil refineries. He joined other early Trump supporters for a meeting at the White House Thursday, although he said the issue was not raised by the president or any participants.

"I'm very open to it, actually — anything that broadens the base and lowers the rates, realizing there will be some winners and some losers," he told reporters later in the day. "It's not so bad for oil. It's not so good for refiners," Cramer acknowledged, but he suggested negative effects could be offset with "expensing" provisions for refiners. "All of this has to be viewed holistically," he said. "If anything ... I think it's a good way to go."

**CR-EEPING WORRIES ABOUT SPENDING FIGHT:** Congress has until April 28 to figure out how to fund the government for the rest of the year, but appropriators are already trying to tamp down desires for another stopgap continuing resolution. "There is talk about doing just a defense appropriation and doing a CR on the rest of it, which would really bother all of us," Rep. [Mike Simpson](#), the energy and water spending cardinal, said Thursday. But appropriators want to hammer out an omnibus appropriations bill to fund the whole government through the end of the fiscal year Sept. 30, a message House Appropriations Chairman [Rodney Frelinghuysen](#) took to Republican leadership on Wednesday, Simpson said. The Idaho Republican argued that breaking out the defense spending takes "the engine away from the train."

**What about new Yucca Mountain money?** Simpson said he had not considered whether Trump's "unexpected election" provides an opportunity to fund the nuclear waste project in an omnibus bill this year. "I don't know whether we want to reopen that [appropriations bill] or not," he said. "If the Senate wants to, I'm more than willing to."

**The Trump challenges:** It's unclear how involved the new administration wants to be in rounding out the rest of 2017 spending, but Simpson said Trump's been "disadvantaged" without his full team in place, most notably OMB Director Mick Mulvaney, who was just confirmed Thursday. "Who do I call up to do a hearing on energy and water? All of that is a challenge," Simpson said. And, he added, "frankly, we didn't do him any favors when we pushed off the appropriations until this year."

**Simpson also chastised Trump for his inability to let go of the campaign.** "So far, we haven't gotten to the governing mode," he said. "You often say to those that lose an election and can't get over it — and you've heard him say to Clinton supporters — 'You lost, get over it!' This is the first I've ever had to say to somebody, 'You won, get over it!'" he said. The seasoned Republican didn't sound too worried about his unflattering view of the president getting back to the White House. "Well, I know they're gonna start tweeting about me," he said with a laugh, while calling Trump's social media habit "somewhat disturbing."

## **UTAH SLATED TO LOSE OUTDOOR CONFERENCE OVER PUBLIC LANDS**

**STANCE:** Utah Gov. Gary Herbert in a call Thursday rejected a request by organizers and sponsors of the Outdoor Retailer trade show to either stop pushing for Trump to rescind the Bears Ears National Monument and drop the state's lawsuit to takeover public lands or see the \$45 million event moved to an friendlier state. The groups have until late spring to decide whether to relocate and have already begun the search. Herbert "has the influence and the ability to bring the delegation together around these issues and change the tone," Outdoor Industry Association Executive Director Amy Roberts told ME. But on the hour-long call with him, "it was pretty clear that we need to continue our search for a new home ... in a state that supports our industry," she said.

**NO CLIMATE MUZZLE AT NOAA:** Concerns the Trump administration would crack down on NOAA climate change work appear unfounded — for now. The agency released [a report](#) Thursday finding the average land surface temperature for January was 2.77 degrees

Fahrenheit about the 20th century average. That marked the third-warmest monthly land average on record.

**HOW TO SPEAK OUT:** Reps. [Ted Lieu](#) and [Don Beyer](#) released a [one-page guide](#) to help federal employees who wish to speak out against White House actions within their agencies. "In this age of gag orders and alternative facts, it's important that we provide federal employees tools to ensure transparency," Beyer said in a statement.

**TAKE A GLANCE! CYBERSECURITY ISSUES FOR OIL AND GAS SECTOR:** [A study](#) released Thursday by the Ponemon Institute found 68 percent of respondents in the oil and gas sector reported at least one security compromise within the last year and just one-third of the industry said their cybersecurity readiness was high.

**PEABODY SIGNS TRUMP AIDE:** Coal giant Peabody Energy has picked up a former Trump campaign and transition aide to [lobby](#) on unspecified legislation and regulations. Peabody is the first lobbying client for Scott Mason, who last month joined Holland & Knight.

**MOVER, SHAKER:** Louis Renjel has been named vice president of federal government affairs and strategic policy for Duke Energy; he joins from transportation company CSX Corp.

## QUICK HITS

— Renewable energy draws increasing Republican support. That could shift climate politics. [Vox](#).

— At least one injured in oil field explosion in Pittsburg County, Oklahoma Thursday. [KJRH](#).

— Scientists highlight deadly health risks of climate change. [CNN](#).

— Oil rises modestly in tight trade, boosted by OPEC hopes. [Reuters](#).

— How Mexican Wind Lights San Diego Homes. [POLITICO Magazine](#).

— NASA is defiantly communicating climate change science despite Trump's doubts. [The Washington Post](#).

## HAPPENING FRIDAY

8:00 a.m. — "[American-Made BioEnergy from Field to Refinery: Feedstock Logistics](#)," Council on Food, Agricultural and Resource Economics, National Press Club, 14th and F Streets NW

2:00 p.m. — "[The New Global Dynamics for Coal](#)," United States Energy Association, 1300 Pennsylvania Avenue NW

## THAT'S ALL FOR ME!

**\*\* A message from the National Wildlife Federation:** America's 40 million hunters and anglers depend upon our nation's public lands. Many of these lands have been protected over the past century by both Republican and Democratic Presidents through the Antiquities Act - a bedrock conservation law enacted by President Theodore Roosevelt - so that every American can enjoy our nation's outdoor treasures. These majestic places help define us as Americans.



They are indispensable to America's hunting and fishing heritage - and serve as powerful economic engines for local communities. Yet right now, some in Congress want to overturn National Monument protections for iconic places, like Bears Ears in Utah. Others want to allow more pollution or even sell-off special places where Americans hunt, fish, hike, and camp. President Trump has strongly supported keeping America's public lands public and we need Congress to do the same for America's hunters and anglers. Help us defend America's public lands: <http://bit.ly/2lhONxJ> \*\*

*To view online:*

<https://www.politicopro.com/tipsheets/morning-energy/2017/02/seismic-shift-to-hit-epa-with-pruitt-confirmation-021443>

## **Stories from POLITICO Pro**

### **Trump steamrolls stream rule [Back](#)**

By Alex Guillén | 02/16/2017 03:58 PM EDT

President Donald Trump today signed a bill repealing an Interior Department rule meant to protect streams from mountaintop removal coal mining.

The Obama administration said the rule, issued in December after more than seven years of work, would have a minimal effect on jobs, even netting an employment increase from new clean-up requirements. But Republicans and industry argue it would wipe out a majority of the ailing coal industry's jobs.

Repealing it "will eliminate another terrible job-killing rule, saving many thousands of American jobs, especially in the mines, which I have been promising you," Trump said at the White House signing ceremony, pointing to coal miners in the room. "The mines are a big deal. I've had support from some of you folks right from the very beginning and I won't forget it."

Trump "made a major down payment on his campaign pledge to revive the coal industry," said National Mining Association President and CEO Hal Quinn.

This is the second time Trump has given his approval to a Congressional Review Act resolution, following his Tuesday [signing](#) of a similar bill killing a Securities and Exchange Act rule requiring oil and mining companies to reveal their payments to foreign governments.

It is also only the third-ever successful use of that obscure law that requires only a simple majority in Congress to kill so-called midnight regulations. The first was in 2001, when Republicans used it to nullify a Clinton ergonomics rule.

With the stream rule nullified, Interior reverts back to the original 1983 regulation that Obama's Interior said was out of date and inadequate to protecting waterways and aquatic life.

Congress is preparing to send even more CRA resolutions to Trump's desk in the coming weeks. The Senate this week passed a House bill blocking a rule aimed at stopping mentally ill people from buying guns. And the House has already passed a bevy of other resolutions that await Senate action and target rules on methane waste, Planned Parenthood funding, land use planning, Alaskan hunting, state-run retirement savings programs and unemployment drug testing.

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## **States on collision course with FERC over nuclear power support** [Back](#)

By Esther Whieldon and Darius Dixon | 02/17/2017 05:02 AM EDT

Aggressive state efforts to provide economic support to nuclear plants are stoking a conflict between state and federal regulators that's throwing the future of power markets into question.

Looking to prevent money-losing nuclear plants from closing, New York and Illinois have offered financial incentives for their reactors, and Ohio, Connecticut, Pennsylvania and New Jersey are facing pressure to follow suit.

But those state actions are running headlong into FERC's regulation of power markets, forcing the agency to either intervene and start a jurisdictional fight with state regulators, or to accept the subsidies that could put fossil-fuel power plants at risk if power prices keep falling.

"There's plenty of pleasantries and plenty of good relations [between FERC and the states], but underneath it everyone kind of sees and knows there's a big storm that is brewing, and FERC is being asked to make what will amount to pretty tough calls," said Raymond Gifford, a partner at the firm Wilkinson Barker Knauer.

"If they make the call kind of vindicating their market vision, you're going to have particularly two angry states," he added, referring to New York and Illinois, "and as other states inch toward that outcome you may get even more."

But it may be months before FERC can act since the five-member agency is down to two commissioners, which leaves it without a quorum until at least one of those seats is filled.

On Tuesday, acting FERC Chairwoman Cheryl LaFleur told a National Association of Regulatory Utility Commissioners panel she planned to keep agency staff plugging away at the issue and hold a technical conference to take in concerns and ideas on the topic.

Among the options, she said, was for FERC to craft a solution that "retains the benefits of the competitive markets for customers," while adapting them to address states' anxiety about power generation. Or it could be addressed through litigation, LaFleur said, a route that saw the Supreme Court twice in the past year overturn two generation incentive programs created by Maryland and New Jersey.

Or states could continue to enact piecemeal programs where the "markets just get cannibalized" to the point where states haphazardly revert back to their old centralized planning models, she said.

For his part, Gifford believes "the stakes are enormous, and one side of the industry or another is going to come out way ahead or way behind depending" on what FERC decides.

In the meantime, an increasing number of states are worried about their turf.

"What I would hope is that we continue as states to have the jurisdiction that we have in making some determination in what's best for our states and what's best for ratepayers in our states," Libby Jacobs, an Iowa state commissioner, told POLITICO. "We need to make sure

we continue to have diversification of fuel sources."

"I think we have to manage all that together and if FERC can be helpful there that's really great," added Jacobs, who is the NARUC electricity committee co-vice chair.

The tension over the federal jurisdiction was apparent at the annual NARUC meeting this week in Washington, where the new state generation subsidies and FERC market rules dominated many hallway conversations and bled into a number of panel discussions.

"I am very active in and around the issue of looming pressures on the nuclear generation in our state," Richard Mroz, president of the New Jersey Board of Public Utilities, told his fellow state regulators this week. "In terms of where we go from here there's probably two options. One would be that New Jersey would undertake some initiative like has been done in Ohio, Illinois or elsewhere." But, like LaFleur, Mroz said he would instead prefer to see FERC or the grid operators come up with a market solution.

Mroz told POLITICO that the issue wasn't yet a priority for his state's legislature or governor. But, he said, "given what [the power companies] have been saying and what they're projecting, all I can say is that this may be coming to us."

FERC itself has been divided on how to fix the markets amid state tinkering, as former Chairman Norman Bay revealed in statements attached to two orders on New England and New York market issues on his last day at the agency this month.

Bay criticized FERC for attempting to block state-subsidized generation from influencing power market prices and blamed the agency for straining its already tense relationship with states.

"The fact of the matter is that all energy resources receive federal subsidies, and some resources have received subsidies for decades," Bay [said](#). "While there are times when the commission must check state action that impermissibly interferes with the wholesale markets, it should endeavor to do so only when necessary."

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**Trump's regulatory clampdown called more flash than substance** [Back](#)

By Andrew Restuccia | 01/30/2017 03:53 PM EDT

President Donald Trump's crackdown on federal regulations could take months, if not years, to implement and likely faces costly court challenges.

The [executive order](#), which Trump signed on Monday, requires that federal agencies and departments identify at least two existing federal rules that can be eliminated every time they issue a new regulation. It also seeks to dramatically limit the cost of rules, declaring that the total price tag of new final regulations combined with repealed regulations "shall be no greater than zero" in fiscal year 2017.

Trump aides cast the order as the most significant regulatory reform effort in decades, arguing that the president is making good on his promise to ease the burden of government on businesses.



But putting the order into practice isn't as simple as Trump's flashy "one in, two out" slogan suggests.

"It's just a very indirect and gimmicky way of deregulating," said Eric Posner, a law professor at the University of Chicago.

It could take years for the administration to fully eliminate regulations that are already on the books. And in some cases, agencies are mandated by law to write regulations, which could make it impossible in some cases to completely abandon them.

The order would also put a heavy burden on agencies with limited resources and shrinking budgets. It relies on these agencies to come up with a proposal to satisfy the order's requirements — potentially setting off a complicated game of musical chairs in which federal workers are scrambling to find ineffective rules that neatly offset the cost of a new regulation.

"The rulemaking process is not a bazaar where rules are traded without regard to content," said Rena Steinzor, a law professor at the University of Maryland who has tracked regulations for decades. Before modifying or killing a regulation, agencies must publish their reasoning for public comment, she noted.

And when outside groups inevitably challenge the administration's decision to scrap key regulations, it will fall on the agencies to defend the decision in the courts with a policy-specific rationale for killing them.

"A court will demand reasons for a repeal and the reasons would have to be something connected to the underlying purpose of the statute," Posner said. "I'm reasonably confident that a court would not accept Trump's executive order as a basis of withdrawing the regulations. There has to be a substantive reason."

Progressive groups strongly criticized the order, arguing that it opens the door to steamrolling environmental and public health protections, among other things.

"Are they saying that if you were going to address climate change that you have to stop protecting clean water?" asked David Goldston, director of government affairs at the Natural Resources Defense Council. "Where's the logic?"

Robert Verchick, president of the Center for Progressive Reform, called the order "short-sighted" and said it doesn't taken into account the benefits of regulations that limit exposure to toxic chemicals or protect drinking water, for instance.

The order appears likely to halt some regulations that industry wants, including rules that would mandate the disclosure of GMOs in food products. Congress asked the agriculture department to come up with the regulations after industry groups lobbied aggressively for federal preemption to avoid a patchwork of state GMO labeling laws.

"I think the executive order at least in the near term is likely to have its intended effect of slowing down, if not stopping, the adoption of new regulations," said Stuart Pape, an attorney at Polsinelli and former lawyer at the FDA.

The order instructs the director of the White House Office of Management and Budget to issue guidance to agencies to help them comply with the requirements. But Trump's nominee to head the OMB, Rep. Mick Mulvaney (R-S.C.), has not yet been confirmed by the Senate.

Trump has not yet nominated anybody to head the White House Office of Information and Regulatory Affairs, which would likely play a central role in implementing the order.

"The workability of the initiative will hinge on the guidance to the agencies from OMB," said John Graham, the who headed OIRA during the George W. Bush administration, explaining that the guidance should provide greater clarity.

Trump aides said Monday that any regulatory withdrawal will comply with existing federal review processes, which include public notice and comment periods. They said the administration is still working out the exact process, but the White House will have final say on which orders are implemented and eliminated.

After fiscal year 2017, when the total net cost of new and repealed regulations should be zero, the OMB director will prescribe "a total amount of incremental costs that will be allowed for each agency" for the upcoming fiscal year, according to the order.

"No regulations exceeding the agency's total incremental cost allowance will be permitted in that fiscal year, unless required by law or approved in writing by the director," the order says.

The order does not apply to regulations related to the "military, national security or foreign affairs function of the United States."

Presidents already have a great deal of discretion to nix burdensome regulations. President Ronald Reagan signed an executive order in 1981 mandating that benefits of a regulation must outweigh the costs, putting in motion a complicated evaluating process used for federal rules that still exists today.

"[T]he right approach is not 'one in, two out' but a careful check on issuing new rules, with the help of cost-benefit analysis — accompanied by an ambitious program to scrutinize rules on the books to see if they should be scrapped," Cass Sunstein, President Barack Obama's former OIRA chief, [said](#) in November after Trump first proposed the policy.

"The Trump administration doesn't need a gimmick to make progress on both fronts," he added in a Bloomberg View column.

Sunstein said the policy is "likely to be a bit of a mess," but Trump "might be able to make it work" if he gives his administration flexibility to implement it.

*Helena Bottemiller Evich contributed to this report.*

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## **How Mexican Wind Lights San Diego Homes [Back](#)**

By T.R. Goldman | 02/16/2017 07:16 PM EDT

Looming over the dry desert scrub, as high as a 25-story building, the giant turbines of the Energía Sierra Juárez wind farm punctuate the horizon just south of the California border, an otherworldly array of white tubular towers each topped with three, 12-ton blades.

Mexico has some of the finest wind in the world, and the Sierra de Juarez mountain range has some of the best in Mexico—a bit turbulent but strong and relatively steady, even in the

daytime. It's ideal wind power country, but not a single kilowatt of the electricity produced here stays in Mexico. Instead, San Diego's Sempra Energy, through its Mexican subsidiary, IEnova, ships 100 percent of its electricity back into the United States, enough to power some 65,000 homes.

The 47-turbine wind farm, whose long-range plan calls for up to seven times as many turbines ultimately producing a sizeable 1.2 gigawatts of power, is a first in the growing cross-border energy trade. And the Mexican export, which flows through a 1.7-mile transmission line, is helping San Diego Gas & Electric (also a subsidiary of Sempra), meet the state's stringent renewable energy requirements—and do it faster and build it at lower cost than if the turbines had been sited in the U.S.

The Energía Sierra Juárez project, which began producing power in June 2015, was launched in the mid-2000s, a time when the state of California had just expanded its already rigorous renewable energy goals. Utilities like San Diego Gas & Electric were scrambling, recalls former California Public Utilities Commission Commissioner Mike Florio, who voted against the agreement. "Utilities were desperate to get renewables as fast as they could, and there weren't a lot of bidders, as I recall."

Now, Energy analysts say, this cross-border trend is being fueled by the extraordinary growth in U.S. natural gas production and the seminal 2013 reform of the Mexican energy market that opened the country's former electricity monopoly to outside investors. "Sempra is making money like a bandit," says Nicolas Puga, an energy analyst at the economic consulting firm Bates White and a former employee of CFE, Mexico's state-owned electric utility.

While attention in Washington is focused on jobs heading south and undocumented workers coming north, one of the largest economic relationships between Mexico and the U.S. involves a product more or less invisible to the public.

"The 800-pound gorilla in the room is that we're exporting between 4 and 5 billion cubic feet of gas into Mexico," says Puga. "I assume any wall will have many beautiful doors to let the gas through."

Overall, the value of U.S. energy exports to Mexico in 2016 was \$20.2 billion, according to the U.S. Energy Information Administration, just under 10 percent of total U.S. exports to Mexico last year. That's more than double the \$8.7 billion of energy imports from Mexico, a reversal from 2010, when the value of Mexico's energy exports to the U.S. was two to three times larger than what the U.S. shipped south.

"In the last 2½ years, there's been quite a lot of investment coming into Mexico on the renewable side, solar and wind," notes Robert Downing, an expert on the Mexican energy market and a partner in the Miami office of the law firm, Greenberg Traurig. "Mexico has tremendous wind resources," he says. And over the next few years, "we think the growth in wind and solar will be substantial."

Sempra's Mexican subsidiary, IEnova, late last year finalized the purchase of Mexico's largest wind farm—an 84-turbine array just south of the Texas border that already serves Mexico's domestic market. "We're looking at renewable energy as a growth opportunity," says Sempra spokesperson JC Thomas.

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**President Donald Trump's threats to impose tariffs** on products coming in from Mexico have unnerved businesses on both sides of the border, but the real danger to cross-border energy projects, especially those that involve placing wind turbines and transmission lines in environmentally sensitive areas, is coming from local homeowners and conservationists.

In January, opponents of the Energía Sierra Juárez project won what could be a significant victory when a U.S. federal judge in California ruled that the Department of Energy's required environmental impact study was flawed because it failed to assess the project's impact on Mexico, focusing only on the U.S. portion of the power line that brings electricity into the United States. Judge M. James Lorenz ordered the DOE and Sempra to work out a remedy with the plaintiff, Backcountry Against Dumps, the small but feisty California nonprofit that has battled the project for years.

"I live 20 miles from the turbines," says Backcountry President Donna Tisdale. "You can see them skylined on the ridge line. At night you see a long line of blinking red lights, visible from dozens of miles away, where there used to be a black sky." Opponents also say the wind turbine blades pose a danger to bats and local raptors such as golden eagles and California condors, while newly built service roads that slice up once pristine terrain could affect the genetic diversity and long-term viability of animals like the Quino checkerspot butterfly and Peninsular bighorn sheep, both endangered species in the United States.

The turbines were installed on land leased from one of Mexico's communal villages or ejidos, most of which date back to the government's agrarian land reform movement in the 1930s. In this case, the turbines, power line and some 25 miles of newly built supply and maintenance roads were set up on the Ejido Jacumé, a village of a couple of hundred people in an ecologically sensitive area of the Mexican state of Baja California. In exchange for leasing some 12,000 acres to Energía Sierra Juárez, Ejido Jacumé members signed a revenue-sharing agreement of 4 percent, a potentially sizable sum of future earnings for a modest farming community.

The mountain range runs the length of the Baja peninsula, and, "with various names, all the way up into California," says Jerre Ann Stallcup, the chief resources officer at the Conservation Biology Institute and a board member of Terra Peninsula, the Mexican nonprofit that originally—and unsuccessfully—sued Mexico's Environmental Protection Ministry to stop the project. "It's all the same ecosystem."

If the January 30 decision by Judge Lorenz stands, there may yet be an assessment of the environmental impact in Mexico from the Energía Sierra Juárez wind farm and the mile-long transmission line to the U.S. border. Or worse, at least for Sempra, whose lucrative power purchase agreement with the Energía Sierra Juárez could disappear if the judge orders the wind farm shut down while a new environmental impact statement is drafted.

Backcountry's lawyer, Stephan Volker, says he believes there's a 50-percent chance Lorenz will order the project shuttered while DOE carries out an environmental assessment of the wind farm and the one mile of transmission line that is in Mexico.

It's far from clear whether Sempra will want to risk appealing—and losing—to the relatively liberal U.S. Court of Appeals for the 9th Circuit, and Sempra declined to comment, other than through a spokesperson to say it was "disappointed" in the ruling.






"If he orders them to disconnect, it is extremely significant," says Parker Moore, a lawyer at Beveridge & Diamond who specializes in the National Environmental Policy Act, the nearly 50-year-old federal statute that mandates environmental assessments. Moore, who is not working for either side, says NEPA analyses "take a really long time to do and cost a lot of money."

Renewable energy has made huge strides in the past 10 years; prices have fallen sharply and there's far more supply. Closing the Energía Sierra Juárez would leave Semptra with a "significant stranded investment" that would face far more price competition when it restarted than it originally had, says Puga, the energy analyst.

And it would add another potential first to the wind farm's title: not only as a trailblazing cross-border exporter of wind power into the United States, but as a precedent-setting legal case that forced all cross-border projects to include costly environmental assessments of Mexico or Canada, and not just the United States.

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