Trump’s War on Clean Energy?

Considering the Trump Administration policies that favor fossil fuels, disincentivize renewables, and deemphasize GHG emission reductions.

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Over the past several years, more electricity generating capacity has been added in the United States from wind and solar combined than from any other fuel source. Many clean energy advocates are worried that steps taken by the current administration will reverse this trend. Harkening back to the claimed Obama “War on Coal,” this presentation examines actions that the new administration has taken or plans to take that may undermine advances in the deployment of clean energy.

Actions taken and/or proposed by the Trump Administration that may adversely affect clean energy deployment trends are broken down into four broad categories, although there is obvious overlap and some actions that are not so easily categorized.

First, there are a number of actions that demonstrate the Trump administration’s lack of concern for reducing greenhouse gas (GHG) emissions or that question the scientific underpinnings of AGW theory.

Second, President Trump has pushed to eliminate regulations in a number of areas, and nowhere is this more evident or focused than with respect to regulations that affect fossil fuel development. Many of these regulations are based both on concerns over climate change and traditional pollution, and efforts to enact many of them date back to before the Obama administration.

Relatedly, the Trump administration has taken a number of steps designed to encourage greater production of fossil fuels, even in areas that were previously set aside for renewables or environmental protection.

Finally, President Trump has proposed eliminating programs that were designed to spur clean energy innovation, and his administration is at least considering reducing incentives that are meant to encourage the deployment of clean energy and implementing policies that would favor baseload electricity sources over renewables.
Climate Change

Paris Climate Agreement

On June 1, after much dramatic build-up, President Trump announced on the White House lawn that he was withdrawing the United States from the Paris Climate Agreement.1 The Paris Agreement, which was reached in December 2015 and has now been signed by 197 nations, is an attempt to reduce global GHG emissions.

One of the components of the Paris Agreement that made President Trump’s withdrawal curious to many is that the agreement contained no binding emission reduction commitments. Under the Agreement, countries were to individually determine their emission-reduction goals, but there are no legal consequences for failing to meet them.2 In other words, President Trump could have simply submitted less ambitious emission reduction goals, or withdrawn the targets submitted by President Obama but remained in the Agreement, or simply steered the country on a path that would make it unlikely to meet Obama’s targets, all without legal consequences. Instead, he took the more drastic step of stating his intention to withdraw from the Agreement, joining Syria and Nicaragua as the only nations on the planet that are not parties to the Paris Agreement.

The Paris Agreement was set up so that it did not need Senate ratification like most formal treaties, because it was submitted pursuant to a ratified treaty (the United Nations Framework Convention on Climate Change) and was consistent with existing federal legislation (the Clean Air Act). So President Obama’s signature was all that was required to make the United States a party to the Agreement. One of the less understood impacts of President Trump’s announcement is that the U.S. withdrawal actually cannot be effectuated until November, 2020, as the provisions for withdrawing from the Paris Agreement were written with the four-year U.S. presidential term in mind. A party can withdraw only by giving written notice “[a]t any time after three years from the date on which [the] Agreement has entered into force for that party,” and such withdrawal then takes effect “upon expiry of one year from the date of receipt” of the withdrawal notice.3

Although there are no enforceable emission reduction commitments in the Paris Agreement, President Trump’s withdrawal undermines clean energy development in a number of ways. Most of the nations determined their reduction targets by expressly considering their renewable energy capacity. Though the targets are not binding, the idea behind the Paris Agreement was that public scrutiny would motivate nations to meet their targets, an approach that has been dubbed “name-and-shame.”

1 President Trump’s Statement announcing the U.S. withdrawal is available here: https://www.whitehouse.gov/the-press-office/2017/06/01/statement-president-trump-paris-climate-accord
2 President Obama submitted the U.S. goal of reducing GHG emissions to 26-28% below 2005 levels by 2025.
3 Paris Agreement, Article 28(1) and (2). The Agreement came into effect on November 4, 2016, when it had been ratified by at least 55 nations representing at least 55 percent of global GHG emissions. The Paris agreement can be accessed here: http://unfccc.int/paris_agreement/items/9444.php.
Discouraging Public and Private Clean Energy Investment

The Paris Agreement also created and continued a number of mechanisms to support a transition to carbon-sensitive energy. The Green Climate Fund, which came into effect in 2010, has as one of its stated priorities to fund low emission energy generation and transmission projects; it had $10.3 billion dollars committed in connection with the Paris Agreement.\(^4\) The Agreement also called for the creation of a new mechanism to contribute to the mitigation of GHG emissions and support sustainable development.\(^5\) This mechanism, the details of which are to be decided at the follow-up Conference of the Parties, would replace the Clean Development Mechanism created under the Kyoto Protocol, and spur emission-reduction investments and the sharing or transfer of clean energy technologies.

There were also a number of side agreements or alliances, keying off the Paris Agreement, that were designed to spur renewable energy deployment. For instance, the *International Solar Alliance*, proposed by India and supported by France, has approximately 120 members committed “to mobilize more than 1000 Billion US Dollars of investments that are needed by 2030 for the massive deployment of affordable solar energy.”\(^6\) Over 20 nations, including the U.S., China, India and most of the EU, also signed the *Mission Innovation* agreement committed to doubling governmental investment in clean energy innovation and working to attract private sector investment.\(^7\) The Trump administration has proposed a budget that would undo the U.S. commitment to doubling its clean energy investment, and the Energy Department has said that its commitment to Mission Innovation is under review.\(^8\)

Perhaps most importantly, many economists and business leaders view the Paris Agreement as the ultimate market signal showing the global commitment to transition to cleaner energy. This, in turn, would spur private investment, investment that the U.S. may lose out on in light of President Trump’s withdrawal. The most tangible example of this is the Breakthrough Energy Coalition, which was founded by 28 of the world’s wealthiest and most influential business leaders, from 10 different countries, who have agreed to jointly invest their own money to get clean energy research results to market.\(^9\) The U.S. withdrawal from the Paris Agreement means that this private money will be invested in other countries, as the Coalition recognizes that innovations will likely come through government research pipelines and thus will expressly

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\(^4\) [http://gcfund.net/home.html](http://gcfund.net/home.html).

\(^5\) Paris Agreement, Article 6.


\(^7\) [http://www.mission-innovation.net/](http://www.mission-innovation.net/).


focus investments on those countries that have committed to increase the size of those pipelines by participating in the Mission Innovation initiative discussed above.  

**Social cost of carbon**

In 2010 and again in 2013, President Obama created an Interagency Working Group on the Social Cost of Greenhouse Gases (IWG). Over the past several years, the IWG, in consultation with the National Academies of Science, Engineering and Medicine, has been working to put a dollar figure on the harm associated with emitting carbon dioxide and other GHGs, a social cost of carbon (SCC). This SCC is to be used by federal agencies in conducting cost-benefit analyses when making regulatory and permitting decisions.

On March 28, 2017, President Trump issued an executive order disbanding the IWG and withdrawing all technical documents that the IWG had created from 2010 through 2016 relating to the SCC.

While the undoing of all efforts relating to the SCC seems straightforward enough, it presents challenges for agencies that are required to consider the costs of their actions as part of their NEPA reviews. For instance, in August, a federal judge in Montana blocked a proposed 179-million-ton expansion of a Signal Peak Energy coal mine because the Interior Department’s environmental review did not adequately attempt to quantify the harms associated with combustion of the increased coal output. Agencies are increasingly being required to consider the costs associated with the downstream combustion of gas or coal, yet there is now no guidance on how to accurately quantify such costs.

**U.S. Funding of New Coal Plants Overseas**

In June, President Trump announced that the Department of Treasury was removing barriers to the U.S. government financing of new coal power plants overseas, as a way to create demand for U.S. exports. President Obama had announced in 2013 that the U.S. would not finance coal plants overseas; in 2015, OECD members reached an agreement that removed financial support for large coal-fired power plants while allowing support for smaller coal plants in developing countries.

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10 [http://www.b-t.energy/](http://www.b-t.energy/). Among the Breakthrough Energy Coalition’s founding members are Jeff Bezos, Richard Branson, Bill Gates, Jack Ma, George Soros, Tom Steyer, Meg Whitman, and Mark Zuckerberg.

11 The IWG includes the Council of Economic Advisers, Council on Environmental Quality, Department of Agriculture, Department of Commerce, Department of Energy, Department of Transportation, Environmental Protection Agency, National Economic Council, Office of Energy and Climate Change, Office of Management and Budget, Office of Science and Technology Policy, and Department of the Treasury.


While the U.S. is pulling out of the Paris Agreement, it maintains a seat on the UN Green Climate Fund due to its prior financial pledges. Reports from the G-20 summit in July suggest that the Trump administration plans to use that seat to promote construction of clean coal power plants and natural gas infrastructure in developing countries, as a way of creating demand for U.S. exports. Although the Fund has no explicit ban against funding fossil fuel projects, all of the three dozen or so projects approved so far were for renewable energy and efficiency projects.

**CAFÉ standards**

In March, President Trump opened up a review of the Corporate Average Fuel Economy (CAFÉ) standards that had been set during the last days of the Obama Administration for the 2022 to 2025 model years. The CAFÉ standards, years in the making following the Supreme Court’s decision in *Massachusetts v. EPA*, would have required automakers’ 2025 models to average 54.5 miles per gallon. If the review eventually results in the standards being lowered, automakers potentially would not have to make as many cars with advanced carbon emission-cutting technology like hybrids, electrics and hydrogen fuel cells in order to hit the minimums.

**Suppressing Climate Change Rhetoric**

Multiple reports, too numerous to dismiss out-of-hand, suggest that the Trump Administration has taken a number of steps to change or bury any public discussion about climate change. These include demoting and dismissing climate scientists who speak out on climate change, pulling climate experts from leading tours at Glacier National Park, scrubbing government web sites of the term ‘climate change,’ and promoting within agencies individuals who will advance a skeptical position on climate change.

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16 See [http://gcfund.net/home.html](http://gcfund.net/home.html).


Eliminating regulations relating to fossil fuels

Clean Power Plan

In March, President Trump issued an executive order calling for EPA to review one of President Obama’s signature climate change initiatives, the Clean Power Plan. The Clean Power Plan would have required states to reduce emissions from fossil-fuel-fired power plants by set amounts by 2030, with a national goal of reducing emissions nationwide to 32% below 2005 levels by 2030. The Clean Power Plan was the culmination of nearly a decade of rule-making following the Supreme Court’s decision in Massachusetts v. EPA.

The Clean Power Plan has been tied up in Court since its adoption. In February, 2016, the Supreme Court ordered that it be stayed until challenges on the merits were decided by the D.C. Circuit Court of Appeals. Oral arguments in the D.C. Circuit took place in September, 2016. The Trump Administration has twice asked the D.C. Circuit to hold the case in abeyance while it was conducting its reviews. While the Court has granted these requests, at least some judges warned with the last 60-day extension on August 8 that EPA should not use the abeyance to avoid its Supreme Court ordered obligation to regulate GHGs.

Undoing the Clean Power Plan, whether by court decision or executive action, will present some unique challenges to the Trump Administration. Arguably, under Massachusetts v. EPA, EPA has an obligation to regulate GHG emissions from power plants so long as its 2009 “Endangerment Finding” remains in effect.

The most recent reports by the New York Times and Reuters are that the Trump Administration will shortly announce plans to repeal the Clean Power Plan and argue in litigation that the rule is illegal under U.S. law. According to these reports, the Trump Administration, rather than offering a specific replacement rule, will then take comments on whether and how GHG emissions from power plants should be regulated.

Oil and Gas Replacement Standards

As part of his March 28 executive order, President Trump also ordered review of the rule entitled “Oil and Gas Sector: Emission Standards for New and Reconstructed Sources,” which had been

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finalized by the Obama EPA in June of 2016. Many years in the making, the Rule imposes obligations on oil and gas fracking, transportation and processing operations to eliminate or reduce methane emissions.

The deadline for entities to conduct the first emissions surveys and begin repairing leaks under the Rule was June 3, 2017. Both before and after Trump took office, EPA had received several petitions to reconsider this Methane Emissions Rule. On June 5, 2017, EPA granted reconsideration on four aspects of the Rule, and the next day EPA Administrator Pruitt proposed staying the Rule for two years while it considered the challenges to the Rule. On July 3, however, the D.C. Circuit Court of Appeals ordered EPA to start enforcing the rule.

The D.C. Circuit decision highlights a significant challenge President Trump faces in trying to undo agency rules that were finalized under the Obama Administration – EPA is bound by the Rule until it is amended or revoked. Rules such as these can only be amended or revoked by providing a “reasoned explanation” for rules not yet in effect, or by following the Administrative Procedures Act (which involves creating an administrative record, giving public notice, responding to comments, etc.). Importantly, EPA cannot stay the effects and enforcement of the Rule while it is conducting its review.

Stream Protection Rule

In December, 2016, the Office of Surface Mining Reclamation and Enforcement (OSMRE) finalized the “Stream Protection Rule,” under the statutory authority of the Surface Mining Control and Reclamation Act (SMCRA). Years in the making, the Rule was designed to minimize the impacts on valley streams in areas where mountaintop surface coal mining occurred. It would have required applicants for permits to expand or start new mines to avoid damage to the “hydrologic balance” of waterways outside of its permit area, to conduct a baseline assessment of nearby ecosystems before mining begins, to monitor affected streams during mining, and to develop a plan for restoring damaged waterways after mining.

In February, 2017, Congress passed, and President Trump signed, a resolution under the Congressional Review Act (CRA) overturning the Stream Protection Rule. The predecessor to the Stream Protection Rule, the Stream Buffer Rule enacted in 2008 under the Bush Administration, had previously been stricken by federal courts; the 1996 Guidance for protecting streams that preceded the 2008 Rule has been recognized as inadequate. Nonetheless, as the CRA prevents agencies such as OSMRE from enacting regulations that are “substantially

similar” to the ones overturned by Congress, it is not clear what if anything OSMRE can do at this stage to minimize the impacts on streams from the valley fill associated with mountaintop mining.

**BLM fracking rules**

President Trump’s March 28 Executive Order also directed the Secretary of Interior to review a number of rules relating to oil and gas production on public lands. The rules being reviewed include a 2015 rule entitled “Oil and Gas; Hydraulic Fracturing on Federal and Indian Lands,” and a November 2016 “Waste Prevention Rule” that was aimed at reducing methane flaring and venting on federal lands, as well as detecting and limiting methane leaks.

Congress had attempted to undo the Waste Prevention Rule using the Congressional Review Act, but three Republican senators voted against the resolution and it did not make it to the President’s desk. In June, Secretary Zinke announced that he would indefinitely delay deadlines for measuring flared gas, upgrading equipment and controlling leaks. On October 4, Secretary Zinke proposed delaying the standards until January 2019. However, later that same day, a federal district court revived the standards, holding that the Interior Department could not delay enforcement of the Rule while it conducts its review.

A similar process played out in August, when a district court ruled that the Department of Interior’s Office of Natural Resources Revenue could not delay implementation of an Obama-era rule that sought to collect greater royalty revenue from federal oil and gas leases, though the Obama ONRR rule was reversed after formal rule-making that took effect in September.

**Expanding Fossil Fuel Development**

**Lifting Federal Coal Lease Moratorium**

President Trump’s March 28 Executive Order ended a temporary moratorium on new coal mining leases on federal land. The 18-36 month moratorium was ordered by the Interior Department in January, 2016 to allow for a programmatic environmental impact statement that would examine the health and environmental impacts from the federal coal leasing program, including climate change impacts, as well as whether taxpayers were getting a fair rate of

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About 40% of coal mined in the United States comes from BLM lands, but the moratorium did not affect existing leases pursuant to which enough coal could be produced to meet 20 years of the nation’s needs. Presumably, action on the environmental review has ceased as well, though the guidelines for the federal coal leasing program have not been updated for decades.

Lifting Arctic drilling ban and expanding offshore drilling

On April 28, 2017, President Trump signed an Executive Order that overturned an Obama-era indefinite ban on drilling in much of the U.S. Arctic Ocean and parts of the Atlantic. Environmentalists have sued over this action, and it raises some interesting legal issues. President Obama invoked a rarely used provision of the 1953 Outer Continental Shelf Act that gives presidents wide latitude to withdraw U.S. waters from future oil and gas leasing. Until it was invoked by President Obama, the law had mostly been used to permanently preserve coral reefs, walrus feeding grounds and marine sanctuaries. The unique legal issue is presented because, although the law allows a president to withdraw waters from drilling, it does not include a provision for reversal and it is possible that Congressional Act would be needed. While the precedent for presidents making use of this provision is scant, it appears non-existent regarding the rescission of a prior president’s use of it.

In the same executive order, President Trump directed the Interior Department to create a new five-year schedule for leasing blocks of the U.S. outer continental shelf for oil and gas exploration, a process that usually takes two years and that the Department began in June.

Pipeline approvals

Almost immediately upon taking office, President Trump took action with respect to the two most controversial and high profile oil pipelines that have been proposed in recent years, the Dakota Access Pipeline and the Keystone XL Pipeline.

Under the Obama Administration, construction of the Dakota Access Pipeline had been stayed towards the end of 2016 while the Army Corps of Engineers conducted a more thorough review of various claimed conflicts alone the pipeline route. On January 24, 2017, President Trump

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37 43 U.S.C. §1341(a). This section, governing energy development in U.S. coastal waters, empowers presidents to “from time to time, withdraw from disposition any of the unleased lands of the outer continental shelf.”
ordered the Army Corps of Engineers to grant permission to complete the pipeline, which runs some 1172 miles from the Bakken and Three Forks shale formations in North Dakota to Patoka, Illinois.\(^{39}\) Oil began flowing in June, and continues despite an order from a federal judge directing the Trump Administration to conduct additional environmental reviews.\(^{40}\)

Also on January 24, President Trump invited TransCanada to resubmit its application to build the Keystone XL pipeline, which runs from the tar sands in Canada to oil refineries on the Gulf Coast in Texas.\(^{41}\) Keystone XL had been rejected by the Obama Administration in 2015 due to its environmental impacts. For apparent business reasons (that is, trouble lining up customers), TransCanada has not yet resubmitted its application.

**Prioritizing Mining Over Renewables On BLM Lands**

The Bureau of Land Management (BLM) under President Trump and Secretary Zinke has taken several steps showing that they will no longer prioritize commercial-scale renewable energy projects on federal land. Under the Obama administration, BLM had approved 60 commercial-scale wind, solar and geothermal projects on federal land, with a total capacity of over 15,000 megawatts. It identified 17 “solar energy zones” on southwest desert lands where solar energy projects would be prioritized.

As an offshoot of these efforts, several federal, state and local agencies, and environmental groups, collaborated with the Department of Interior in creating the Dessert Renewable Energy Conservation Plan (DRECP). The Department had finalized its record of decision in September 2016. Dubbed the largest habitat conservation plan ever developed pursuant to the Endangered Species Act, the DRECP identified 22.5 million acres particularly well-suited for solar energy development, taking account of environmental concerns, solar potential, infrastructure, and other development possibilities. A little less than half of the planning area was on federal lands, and 388,000 acres were identified as “development focus areas” suitable for large-scale solar development. In December 2016, the identified areas were “segregated” from new mining claims for a period of two years while the agency conducted a detailed study on whether they should be formally segregated for up to 20 years.


\(^{41}\) [https://www.whitehouse.gov/the-press-office/2017/01/24/presidential-memorandum-regarding-construction-keystone-xl-pipeline](https://www.whitehouse.gov/the-press-office/2017/01/24/presidential-memorandum-regarding-construction-keystone-xl-pipeline). The southernmost section of the proposed Keystone XL pipeline, running from Pershing, Oklahoma to Texas, was constructed under the Obama Administration; the unbuilt portion is proposed to run from ___ to Pershing.
During Clean Energy Week in Washington at the end of September, Secretary Zinke delivered a series of remarks suggesting that large-scale solar power may not be a wise use of public land. His actions back up that sentiment.

In early October 2017, BLM proposed that the withdrawal of 1.3 million acres in the DRECP planning area be cancelled and opened up to mining. Ending the mining moratorium, which is not set to expire until December 2018, seems to indicate that the Trump administration has no desire to continue President Obama's unprecedented push to develop commercial-scale renewable energy projects on public lands. It is likely a first-step to dismantling the DRECP.

This would be the second major mining withdrawal decision by BLM within the past month. In September, BLM allowed a two-year moratorium order protecting 10 million acres of the most sensitive greater sage grouse habitat in six states to expire, opening them to potential mining activity. As with the segregation of lands in the DRECP, the sagebrush focal areas had been withdrawn while BLM evaluated whether all 10 million acres should be removed from mining claims for 20 years. BLM is not expected to complete that EIS until next year.

**Eliminating Programs Favoring Renewables / Budget and Taxes**

*Proposed budget cuts and elimination of clean energy programs*

While it is hard to know at this stage what the 2018 federal budget will look like when it emerges from Congress, if President Trump’s proposed budget is any indication, clean energy will bear greater budget reductions than perhaps any other area of government.

Most dramatically, DOE’s clean energy research office, the Office of Energy Efficiency and Renewable Energy (OEERE), would see a 69% cut under President Trump’s proposal, from $2.069 billion in 2017 to $636 million. That office provides 80% of the funding to the National Renewable Energy Laboratory (NREL) in Colorado. The OEERE would see significant personnel cuts as well. The cuts include a 71% cut to solar energy programs and a 67% cut to wind energy programs.

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42 [https://www.eenews.net/greenwire/stories/1060062033](https://www.eenews.net/greenwire/stories/1060062033)
43 [https://www.eenews.net/stories/1060062795](https://www.eenews.net/stories/1060062795)
44 [https://www.eenews.net/stories/1060062795](https://www.eenews.net/stories/1060062795)
46 President Trump’s budget request documents for the Department of Energy are available here: [https://energy.gov/sites/prod/files/2017/05/f34/FY2018BudgetinBrief_0.pdf](https://energy.gov/sites/prod/files/2017/05/f34/FY2018BudgetinBrief_0.pdf)
President Trump’s proposed budget cuts would also completely gut the Advanced Research Projects Agency-Energy (ARPA-E), a research program designed to pursue energy breakthroughs. The ARPA-E would see a 93% cut, leaving it with just a $20 million budget. Even clean coal research, conducted through the DOE’s Fossil Energy Research and Development Program, would see a 56% cut, including an 85% cut to research on carbon capture and sequestration.\textsuperscript{49} Trump’s EPA has even proposed killing a small grant for delivering clean cookstoves in developing countries, a bipartisan program that dates back 15 years to address a problem that kills an estimated 1.9 million people per year.\textsuperscript{50}

The OEERE and the ARPA-E are (or were) important vehicles for the U.S. to meet the increased R&D funding called for by the Mission Innovation initiative discussed above. While the 22 other nations and the EU that agreed to that initiative will be doubling their clean energy R&D budgets, and attracting private capital as a result, President Trump’s proposal would slash clean energy R&D in the United States.

There is at least some indication that Congress will not go along with the massive cuts to clean energy projects proposed by the Trump administration. A bipartisan report by the Senate Appropriations Committee (approved by a 38-1 vote) included a full-throated defense of robust and smart government action in all phases of clean energy development, from the lab to the marketplace.\textsuperscript{51} Congress is currently working on the FY2018 budget.

\textit{Tax Credit Financing of Renewable Projects}

Although some in the renewable energy industry remain concerned, there is as of yet no indication that the two majors tax credits that benefit renewable energy projects – the production tax credit (PTC) used primarily for wind projects and the investment tax credit (ITC) for solar projects – are in the Trump Administration cross hairs. This is perhaps because, although these were both extended in 2015, they are scheduled to wind down in coming years. Nonetheless, there are aspects of President Trump’s proposed tax reform that could disproportionately harm renewable energy deployment.

The lower corporate tax rates being proposed by President Trump, while cheered by most industries, threaten tax credit financing that many renewable projects utilize. Wind and solar energy developers frequently sell portions of their tax credits to corporations, often banks, that can apply the credits to their own tax bills; lower corporate tax rates mean that businesses would


\textsuperscript{50} See https://thinkprogress.org/trump-epa-kills-life-saving-grants-d40d53ab89ff/.

need fewer write-offs. According to a Bloomberg New Energy Finance report, tax credit financing often accounts for half the cost or more of major renewable energy projects.\(^{52}\)

**Solar Trade Case before the U.S. International Trade Commission**

On September 22, 2017, the U.S. International Trade Commission (USITC) unanimously found that imported solar cells and modules have caused “serious injury” to U.S. producers of crystalline silicon photovoltaic (CSPV) products. The case arises out petitions filed by now-bankrupt Suniva and SolarWorld under section 201 of the 1974 Trade Act, a rarely used procedure.\(^{53}\) The basis for the petitions was that cheap solar imports have resulted in global overcapacity and made it impossible for them to compete.

The USITC will now make a recommendation of a proposed remedy, presumably involving tariffs, to President Trump. The choice of remedy ultimately rests exclusively with President Trump. The vast majority of the U.S. solar industry is opposed to the request for trade penalties.

The most significant remedies being considered include tariffs on CSPV cells (at 25-40 cents per watt) and CSPV modules (at 35 cents per watt, which would equal 50% of the average unit cost per module).\(^{54}\) These tariffs have been proposed in addition to either a per-watt floor price on imported solar products (74-78 cents) and/or a per-cell and per-module import quota.\(^{55}\)

President Trump has not yet taken a public position on the case. On the one hand, he has not been shy about threatening tariffs in a number of areas, and he appears committed to assisting and growing domestic manufacturing. This suggests he may be receptive to proposed tariffs, as well as to floor prices or quotas directed at imports, as these would directly assist U.S. solar manufacturers be more competitive.

On the other hand, President Trump appears equally committed to securing good-paying, blue-collar jobs. Any tariff, floor price or quota on imports would immediately increase the price for solar retailers, installers and consumers. The number of solar module manufacturing jobs in the

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\(^{53}\) The Trade Act of 1974, 19 U.S.C. §2101 et seq, is better known as providing the President with “fast track” authority to negotiate trade deals that Congress can approve and disapprove, but not amend or filibuster. Section 201, 19 U.S.C. §2251, is a rarely used procedure that allows the Commission to determine that “an article is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article.” The petition submitted by Suniva and SolarWorld, as published in the Federal Register, is available at https://www.usitc.gov/trade_remedy/731_ad_701_cvd/investigations/2017/Solar%20Panels/Safeguard/cspv_-institution.pdf.

\(^{54}\) A 50% ad valorem is the statutory threshold for a new tariff. 19 U.S.C. §2253(e)(3).

\(^{55}\) These proposals are drawn from the recommendations of the petitioners, Suniva and SolarWorld, submitted following the USITC’s injury determination. Proceedings and filings before the ITC can be accessed here: https://www.usitc.gov/investigations/title_7/2017/crystalline_silicon_photovoltaic_cells_whether_or/safeguard.htm.
U.S. is dwarfed by the by the number of jobs in solar retail, installation and product development; only 15% of the roughly 270,000 people employed in the U.S. solar industry work in manufacturing.\footnote{http://www.thesolarfoundation.org/wp-content/uploads/2017/02/Census-Infographic.pdf}

The tie-breaker in this apparent conflict of President Trump’s priorities may be whether he wants to see more or less solar growth in the country, as the increased cost associated with tariffs and quotas would likely mean less solar units installed, some say dramatically less. This is why the U.S. solar industry stands opposed. The USITC decision reflects a rejection of requests from 27 solar equipment manufacturers, 16 senators and 53 members of the House of Representatives who sent letters asking for the petition to be thrown out. The governors of Nevada, Colorado, Massachusetts and North Carolina also sent a letter voicing their opposition, saying tariffs “could inflict a devastating blow on our states’ solar industries and lead to unprecedented job loss, at steep cost to our states’ economies.”

There are some alternative remedies being considered, possibly in conjunction with tariffs, floor prices and quotas, some of which could actually result in a net increase of solar installations. These include:

- directing (through executive order) U.S. governmental agencies to adopt a “Buy American” policy for all solar cells and modules purchased by federal agencies;
- conducting a study of cyber, electrical grid and national security risks by using non-U.S. manufactured CSPV cells and modules;
- initiating bilateral and multilateral negotiations to reduce global excess capacity of cells and modules and restore a supply and demand balance in the global market;
- considering the disbursement of funds to those seeking the development of new or additional manufacturing capacity relating to the CSPV cell/module supply chain;
- fully funding the Department of Energy’s SunShot program’s research grants for the duration of the tariff period; and
- amending the Investment Tax Credit program to keep in place the 30 percent incentive after January 1, 2020 -- when the credit is slated to start ramping down -- for projects that use domestically produced cells and panels.

Suniva and SolarWorld have submitted their proposed remedies to the ITC panel, and a public hearing was scheduled for October 3. The ITC has until November 21 to make its recommendations for a remedy to President Trump.

\textit{Grid Reliability}

Shortly after he took office, Energy Secretary Perry announced that the agency would conduct a “grid reliability” study. Secretary Perry asked for a plan to evaluate the extent to which regulatory burdens, subsidies and tax policies are responsible for the premature retirement of
baseload plants.\footnote{See \url{https://www.bloomberg.com/news/articles/2017-04-15/electric-grid-study-ordered-by-u-s-energy-chief-to-boost-coal}} By numerous accounts, this study was requested to show that renewables were undermining grid reliability, to lay the foundation for more coal-friendly (and renewable-unfriendly) policies.\footnote{See \url{https://www.bloomberg.com/news/articles/2017-04-15/electric-grid-study-ordered-by-u-s-energy-chief-to-boost-coal}}

Secretary Perry had previously suggested, at a Bloomberg New Energy Finance conference in April, that increased reliance on renewable energy sources may make the grid unreliable and created national security concerns. Most astonishingly, he suggested that the Trump administration may even try to preempt state and local policies that encourage renewable energy, such as renewable portfolio standards, out of concern for national security.\footnote{See e.g., \url{https://www.bloomberg.com/news/articles/2017-04-15/electric-grid-study-ordered-by-u-s-energy-chief-to-boost-coal}; \url{https://cleantechnica.com/2017/04/28/trump-wants-cut-renewables-energy-market/}; \url{http://time.com/4754578/rick-perry-paris-agreement-trump-climate-change/}; see also \url{https://www.ecowatch.com/trump-state-renewable-energy-goals-2381603128.html}; \url{http://blogs.ei.columbia.edu/2017/06/19/trumps-attack-on-renewable-energy/}}

In July, \textit{Bloomberg} obtained the draft grid reliability report, written by DOE staff, which essentially concluded the opposite. The draft report found that it was primarily abundant affordable natural gas and flat electricity demand, rather than environmental regulations and renewable subsidies, that were driving coal plant retirements. The draft report also bluntly concluded that the grid is more reliable today than ever before.\footnote{See \url{https://time.com/4754578/rick-perry-paris-agreement-trump-climate-change/}; see also \url{https://www.ecowatch.com/trump-state-renewable-energy-goals-2381603128.html}; \url{http://blogs.ei.columbia.edu/2017/06/19/trumps-attack-on-renewable-energy/}}

Not unexpectedly, Secretary Perry’s office and/or the administration made some changes to the report before it was officially released, and those two major conclusions were removed. In its place, the final report finds that the dispatch of variable renewable energy has negatively impacted the economics of baseload plants, and suggested that state renewable portfolio standards and federal tax credits were examples of wholesale market impacts and distortions.\footnote{See \url{https://www.greentechmedia.com/articles/read/leaked-draft-of-doe-grid-study-says-renewables-are-not-a-threat#gs.3z_8MiE}} While the final report included these conclusory assertions, it failed to remove the underlying analysis and data showing there was no widespread correlation between renewable energy penetration and baseload retirements; the final report also contains the data showing the grid is as reliable as ever, even if the blunt conclusion from the draft report has been removed.\footnote{The final report and Secretary Perry’s transmission letter are available here: \url{https://energy.gov/staff-report-secretary-electricity-markets-and-reliability}.}

In his letter accompanying the final report, Secretary Perry asserts: “It is apparent that in today’s competitive markets certain regulations and subsidies are having a large impact on the functioning of markets, and thereby challenging our power generation mix.”\footnote{See e.g., \url{https://thinkprogress.org/trump-officials-rewrite-grid-study-ac7d3d188b6a/}.} This is almost directly contrary to the actual analysis in the report.

\footnote{The final report and Secretary Perry’s transmission letter are available here: \url{https://energy.gov/staff-report-secretary-electricity-markets-and-reliability}.}
Value-of-coal tariff?

While most in the renewable energy world were relieved that the grid reliability study did not reach conclusions as anti-renewable as feared, it did not take long for the Department of Energy to make use of it to propose a surprise rule that would help prop up coal and nuclear facilities.

On September 28, 2107, Secretary Perry sent a letter and notice of proposed rule-making to FERC that would, if implemented by FERC, benefit the coal and nuclear industry at the expense of renewables and natural gas.\(^64\) Citing the need for grid reliability and resiliency, Secretary Perry is proposing that FERC allow eligible power sources to participate in a yet-to-be-determined rate structure that allows the owner to recover its “fully allocated costs” plus a “fair return on equity.” The key qualification for becoming an eligible power source is that a facility must have a 90-day supply of fuel on-site that would allow it to operate during an emergency or natural or man-made disaster. All nuclear power plants and most coal-fired power plants can meet these requirements today, while gas plants and renewable facilities cannot.

Secretary Perry’s request was made pursuant to an obscure provision of the Department of Energy Organization Act that allows the Secretary to propose rules “with respect to any function within the jurisdiction” of FERC.\(^65\) FERC is not required to implement the proposed rule, and is not bound by the DOE’s recommendation, though two of the three current Commissioners were appointed by President Trump.\(^66\) If enacted, the proposal may help coal and nuclear plants remain in operation even if they are not economical to run, and give them a price advantage over gas plants and wind and solar farms; it would be a significant shift from FERC’s largely free-market approach to governing.\(^67\)

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\(^{64}\) Secretary Perry’s letter is available here: https://energy.gov/sites/prod/files/2017/09/f37/Secretary%20Rick%20Perry%27s%20Letter%20to%20the%20Federal%20Energy%20Regulatory%20Commission.pdf

\(^{65}\) 42 U.S.C. §7173.

\(^{66}\) FERC’s announcement of the proposal and solicitation of comments is available here: https://www.ferc.gov/media/headlines/2017/2017-3/10-04-17.pdf