

Energy Under Trump: Impacts of the 2017 Election

**Public Utility Law Section
Annual Meeting and Seminar**

August 18, 2017

Austin, Texas





Appointments to Date Impacting Environmental Policy



- **EPA Administrator - Scott Pruitt**
 - Former Oklahoma Attorney General



- **Secretary of Energy – Rick Perry**
 - Former Governor of Texas



- **Secretary of Interior – Ryan Zinke**
 - Former Montana Congressman

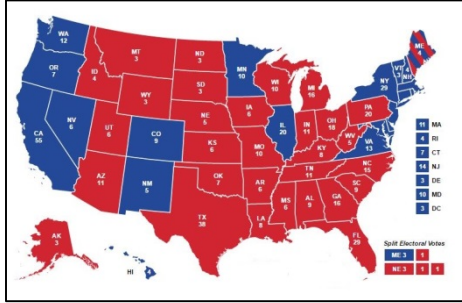


- **Secretary of of Agriculture - Sonny Perdue**
 - Former Governor of Georgia



- **FERC Comms – Chatterjee, Powelson & Glick**





Outline



- *Regional Haze Rule & CSAPR*
- Greenhouse Gas Rules





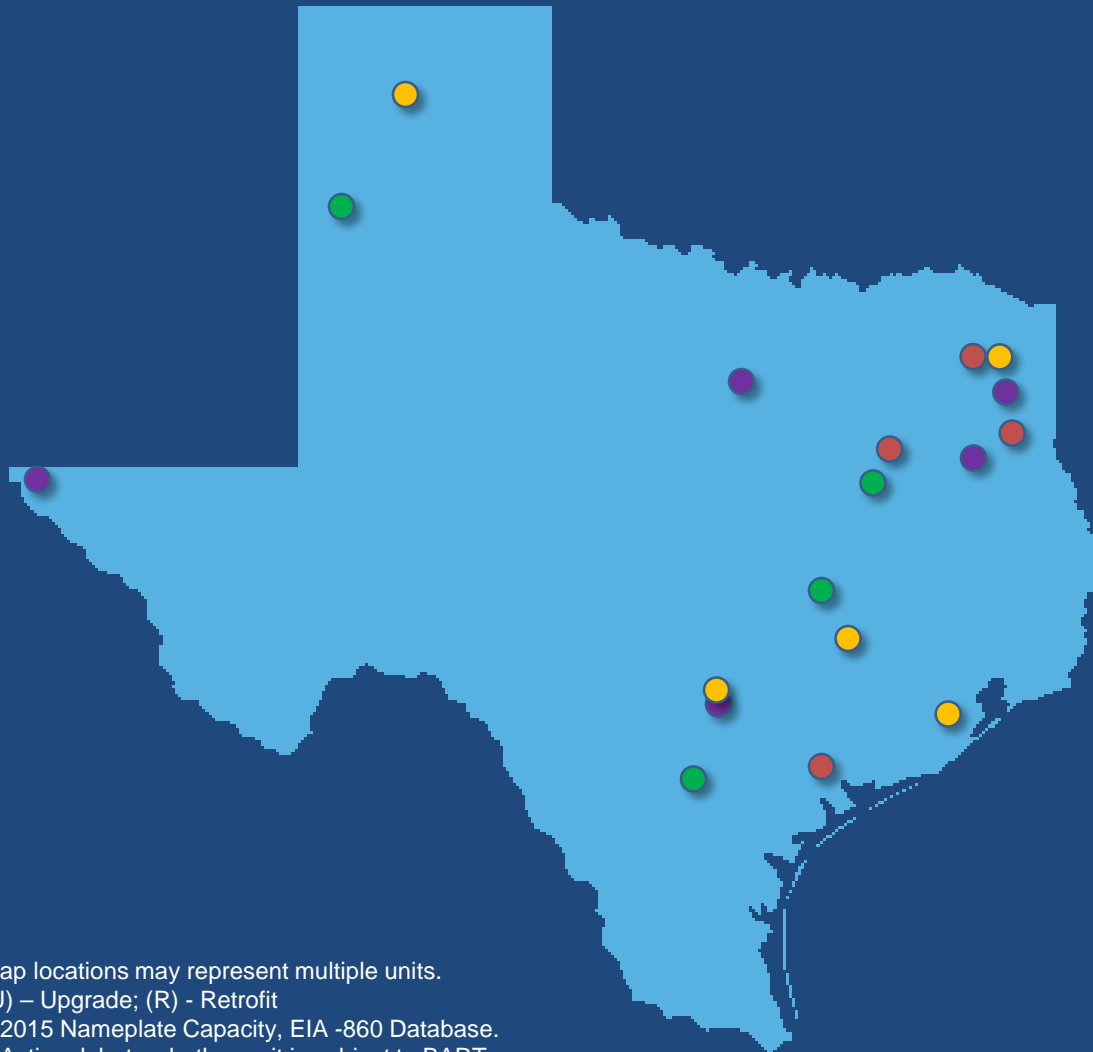
Regional Haze Before Election: Texas



- Jan. 5, 2016 – EPA publishes Reasonable Progress FIP.
 - New scrubbers on 7 units, upgraded scrubbers on 8 others.
- Summer/Fall 2016 - EPA threatens BART FIP proposal.
 - New scrubbers on 12 units; scrubber upgrades on 4 units.
- Related CSAPR Action: Nov. 3, 2016 – EPA releases proposal to remove TX from CSAPR annual SO₂/NO_x.
 - If TX “opts” back into CSAPR, BART FIP expected to go away.



Units Targeted by Reasonable Progress and BART FIPs



UNIT	CAPACITY (MW)
Coal – Reasonable Progress & BART	
Big Brown 1 (R)	593
Big Brown 2 (R)	593
Monticello 1 (R)	593
Monticello 2 (R)	593
Monticello 3 (U)	793
Coletto Creek 1 (R)	622
Martin Lake 1 (U)	793
Martin Lake 2 (U)	793
Martin Lake 3 (U)	793
Coal – Reasonable Progress	
Limestone 1 (U)	893
Limestone 2 (U)	957
Sandow 4 (U)	591
San Miguel (U) ³	410
Tolk 171B (R)	568
Tolk 172B (R)	568
Coal – BART	
Fayette 1 (R) ⁴	615
Fayette 2 (R) ⁴	615
Harrington 061B (R)	360
Harrington 062B (R)	360
JT Deely 1 (R)	486
JT Deely 2 (R)	446
W A Parish 5 (R)	734
W A Parish 6 (R)	734
Welsh 1 (R)	558
Gas (Burn Oil) – BART	
Graham 2	387
Newman 2 ⁵	82
Newman 3 ⁵	122
O W Sommers 1	446
O W Sommers 2	446
Stryker Crk ST 2	523
Wilkes 1	180
Expected FIP-Driven Retirements	3,000-8,400 MW (out of 17,247 MW included)

Map locations may represent multiple units.

(U) – Upgrade; (R) - Retrofit

1 2015 Nameplate Capacity, EIA -860 Database.

2 Active debate whether unit is subject to BART.

3 The San Miguel unit is already upgraded; additional operational costs anticipated.

4 Fayette 1 & 2 already retrofitted; additional operational costs anticipated.

5 The Newman Units 2 and 3 are further limited to burning fuel oil for no more than 876 hours per year.



5th Circuit Opinion Regarding Importance of Grid Reliability

Texas v. EPA, 829 F.3d 405 (5th Cir. 7/15/2016)



- “The Clean Air Act requires EPA to consider ‘the energy [] impacts of compliance’ with the emission controls in a SIP or FIP. Petitioners have a strong likelihood of success in showing that **EPA failed to do so** when it devised its FIP because the Final Rule would render several of the affected electrical generating units uneconomical and cause the closure of 3,000 to 8,400 MW of generating capacity in Texas.” (emphasis added; citations removed)
- “EPA, responding to concerns ERCOT submitted in the notice and comment period, attempted to address all questions about the impact of the Final Rule on power capacity in Texas **in half of one page** of the Federal Register...EPA summarily dismissed [ERCOT] concerns about grid reliability in Texas and relied on a report prepared by a private expert outside the agency to bolster its conclusion.” (emphasis added; citations removed)



5th Circuit Opinion Regarding Importance of Grid Reliability

(Cont. . .)



- As EPA’s reliance on an outside expert demonstrates, **EPA has no expertise on grid reliability**—its sister agency FERC, uninvolved in this regulatory scheme or this rulemaking, is the federal expert in that area....Particularly when contrasted with the expert report of ERCOT, the group with the greatest knowledge regarding questions of grid reliability in Texas, EPA’s truncated discussion of grid reliability indicates that the agency may not have fulfilled its statutory obligation to consider the energy impacts of the FIP.” (Emphasis added; citations removed)
- “Even setting aside the costs of compliance for the power company petitioners, if the Final Rule causes plant closures, the **threat of grid instability and potential brownouts alone constitute irreparable injury to Texans.**”



Regional Haze After Election: Texas



Reasonable Progress FIP: Mar. 22, 2017 – EPA/DOJ seeks (and 5th Circuit grants) partial remand of the case for reconsideration (case is being held in abeyance).

BART FIP: August 17, 2017: EPA/DOJ files Status Report:

- Negotiation ongoing between EPA, TCEQ, and relevant parties for potential settlement to address BART (and potentially CSAPR/Reasonable Progress).
- Subject to consent decree to finalize BART FIP by September 9, 2017.



Pristine (0 deciviews)



Hypothetical Maximum Impairment in Single Area (5 deciviews)



See: Fichtorn & Flynn, Hunton & Williams, EPA's Regional Haze Program: A New Agenda for Visibility



Pristine (0 deciviews)



EPA Standard for Perceptible Impairment (1 deciview)



See: Fichtorn & Flynn, Hunton & Williams, EPA's Regional Haze Program: A New Agenda for Visibility



What a Difference a FIP Makes

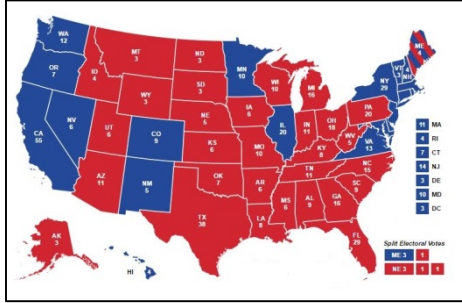
Under Texas SIP

With FIP Implemented



- Wichita Mountains (OK): 0.14 deciview improvement (above)
- Even Less Improvement in Texas
 - Big Bend National Park: 0.03 deciview improvement
 - Guadalupe Mountains NP: 0.04 deciview improvement





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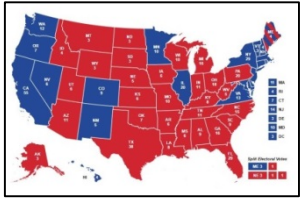




Power Plant GHG Rules: Pre-Election

- Carbon Pollution Standards (111(b) New-Source Rule)
 - Oct. 23, 2015 – Final Rule published in *Federal Register*.
 - Jan. 2016 – Briefing wraps up in D.C. Circuit.
 - Apr. 17, 2017 – Oral argument scheduled at D.C. Circuit.
- Clean Power Plan (111(d) Existing-Source Rule)
 - Oct. 23, 2015 – Final Rule published in *Federal Register*.
 - Feb. 9, 2016 – Supreme Court grants first-ever stay of a pending rule.
 - Sept. 27, 2016 – *En Banc* hearing of D.C. Circuit.
 - Dec 2016 - Feb. 2017 – D.C. Circuit opinion anticipated.
- Range of Climate-related Executive Orders & Guidance
 - Social Cost of Carbon; Mandatory GHG Consideration under NEPA





GHG Rules: Post-Election



3/28/17 – EO 13783 -“Promoting Energy Independence and Economic Growth”

- Instructs EPA to review both 111(b) & (d) rules (DOJ Motion for Abeyance).
- Instructs EPA to review methane (and VOC) rule for oil & gas sector.
- Rescinds GHG-related EOs; instructs CEQ/agencies to withdraw NEPA GHG guidance and Social Cost of Carbon Technical Support Document.

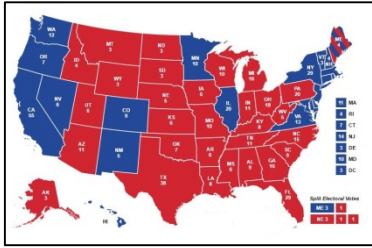
3/30/17 – D.C. Cir. delays previously scheduled oral argument in 111(b) case.

6/1/17 – President Announces Intent for U.S. to Withdraw from Paris Agreement

7/20/17– OMB-OIRA: EPA “proposes to withdraw [111(b) and (d) Rules] on grounds that they exceed EPA’s statutory authority.”

8/8 & 8/10/17 - D.C. Cir. grants stay of 111(b) & (d) cases (60-days of (d)case).



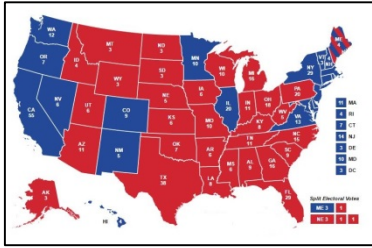


Power Plant GHG Rules: What's Next? (cont...)



- Replacement 111(d) Rule “Inside the Fence”
- “Endangerment Finding” & “Significant Contribution”
 - Previous Administration did not conduct source category-specific endangerment finding for 111(b) Rule, and ultimately, Clean Power Plan (111(d) Rule).
 - Petitioners in litigation have claimed a source-category, GHG-specific finding is necessary.
 - EPA in litigation has previously claimed that once listed as a source subject to Section 111, [for any pollutant], then further pollutant-specific finding is not necessary.





Power Plant GHG Rules: What's Next? (cont...)



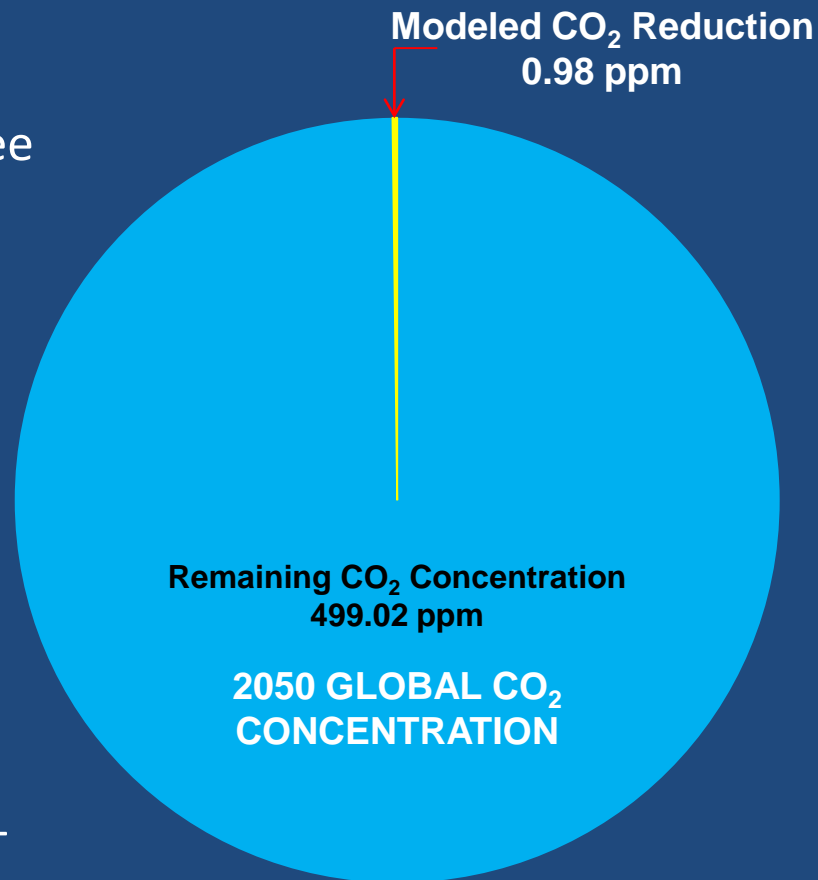
- CAA §202(a)(1) – Section for new motor vehicles or vehicles engines; basis for 2009 Endangerment Finding
 - “The Administrator shall by regulation prescribe (and from time to time revise) in accordance with the provisions of this section, standards applicable to the emission of any air pollutant from any class or classes of new motor vehicles or new motor vehicle engines, which in his judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare....”
- CAA §111(b)(1)(A) – Endangerment language at issue in CAA §111 Rules
 - “The Administrator shall, within 90 days after December 31, 1970, publish (and from time to time thereafter shall revise) a list of categories of stationary sources. He shall include a category of sources in such list if in his judgment it causes, or contributes **significantly** to, air pollution which may reasonably be anticipated to endanger public health or welfare.” (emphasis added)



Setting the Context for “Significant Contribution” Debate

CALCULATED CLIMATE BENEFITS OF CPP:

- 0.2% reduction in CO₂ concentration (see pie chart)
- Global temperature reduced by 0.01° F
- Sea level rise reduced by less than 1/100th of an inch (a dime)
- In 2025, total annual US reductions will be offset by approximately 3 weeks of Chinese emissions
- For every coal plant EPA predicted the CPP would shut down under the CPP, 31 more are being built across the globe.





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QUESTIONS?

