The Trump Administration’s Rollback of U.S. Climate Policy: Can It Be Stopped?

Professor Richard Lazarus
Harvard University

5 pm, Tuesday 20 November 2018

Finley Library
Lauterpacht Centre for International Law
Part I
Obama Climate Rules

Part II
Trump Rollbacks

Part III
Can They Be Stopped?: The Judicial Role
The Clinton Administration

1993 - 2001
The Bush Administration
2001-2009
“These urgent dangers to our national and economic security are compounded by the long-term threat of climate change, which if left unchecked could result in violent conflict, terrible storms, shrinking coastlines, and irreversible catastrophe. These are the facts

President Barack Obama
Date: Jun 26, 2009
Question: On Passage of the Bill in the House
Required: Simple Majority
Result: Passed

Ideology Vote Chart

219-212
Passed

Key: D Aye   R Aye   D No   R No
“PLAN A”
Congressional Legislation

“PLAN B?”
Administrative Regulation
MASSACHUSETTS, ET AL., PETITIONERS v. ENVIRONMENTAL PROTECTION AGENCY ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

[April 2, 2007]
Part V

Environmental Protection Agency

40 CFR Chapter I
Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act; Final Rule
Transportation = 28% US GHGs
Double Fuel Efficiency & Halve CO2 pollution by 2025 (compared to 2010)
Electricity = 28% US GHGs
Environmental Protection Agency

40 CFR Part 60
Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units; Final Rule
• § 111(d)(1): the Administrator shall prescribe regulations . . . under which each State shall submit to the Administrator a plan which . . . establishes standards of performance for any existing source for any air pollutant . . .
• § 111(a)(1): “‘standard of performance’ means a standard for emissions of air pollutants which reflects the degree of emission limitation achievable through the application of the best system of emission reduction which *** the Administrator determines has been adequately demonstrated.”
Obama approach: What is possible on Grid?

- Improve efficiency
- Shift from coal to gas
- Shift from fossil to renewables

32% reduction by 2030
(15% more than base)
METHANE

DEPARTMENT OF THE INTERIOR
Bureau of Land Management
43 CFR Parts 3100, 3160 and 3170
[17X.LLWO310000.L131000000.PP0000]
RIN 1004–AE14

Waste Prevention, Production Subject to Royalties, and Resource Conservation
AGENCY: Bureau of Land Management, Interior.
ACTION: Final rule.

SUMMARY: The Bureau of Land Management (BLM) is promulgating new regulations to reduce waste of natural gas from venting, flaring, and leaks during oil and natural gas production activities on onshore Federal

ENVIRONMENTAL PROTECTION AGENCY
40 CFR Part 60
RIN 2060–AS30
Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources
AGENCY: Environmental Protection Agency (EPA).
ACTION: Final rule.

Friday, June 3, 2016

ENvironmental PROTECTION AGENCY
40 CFR Part 60
RIN 2060–AM08
Standards of Performance for Municipal Solid Waste Landfills
AGENCY: Environmental Protection Agency (EPA).
ACTION: Final rule.

Monday, August 29, 2016
Path to Paris Accord
Part I
Obama Climate Rules
Part II
Trump Rollbacks
“These urgent dangers to our national and economic security are compounded by the long-term threat of climate change, which if left unchecked could result in violent conflict, terrible storms, shrinking coastlines, and irreversible catastrophe. These are the facts, and they are well known to the American people.”

President Barack Obama

The concept of global warming was created by and for the Chinese in order to make U.S. manufacturing non-competitive.

11:15 AM - 6 Nov 2012
Presidential Executive Order on Promoting Energy Independence and Economic Growth

EXECUTIVE ORDER

PROMOTING ENERGY INDEPENDENCE AND ECONOMIC GROWTH

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. Policy. (a) It is in the national interest to promote clean and safe development of our Nation's vast energy resources, while at the same time avoiding regulatory burdens that unnecessarily encumber energy production, transportation, and consumer use of energy resources. To promote the adoption of energy-friendly policies, including protection and expansion of domestic energy production, the Federal Government shall:

1. Support initiatives that encourage the widespread use of new and existing technologies for energy generation, including wind, solar, and other renewable sources.

2. Implement policies that reduce the dependency on foreign oil by increasing domestic energy production.

3. Establish incentives for the development of energy-efficient technologies and practices.

4. Collaborate with international partners to promote global energy security and reduce reliance on foreign energy sources.

5. Enhance energy security through the development of diverse energy sources and infrastructure.

This Executive Order shall be implemented by the appropriate Federal agencies and platforms, with the assistance of relevant stakeholders, to achieve the goals set forth in this document. The heads of Federal departments and agencies shall ensure that this Executive Order is carried out in a manner consistent with applicable laws and policies.
Coal Decline Nationwide U.S.

Percentage of Electricity Generated
2002 - 2016

Mid-Atlantic: 61 → 33
Southeast: 51 → 25
Midwest: 66 → 47
Central: 68 → 46
West: 44 → 31

Source: DOE, 2016
Sec. 3. Rescission of Certain Energy and Climate-Related Presidential and Regulatory Actions. (a) The following Presidential actions are hereby revoked:

(i) Executive Order 13653 of November 1, 2013 (Preparing the United States for the Impacts of Climate Change);

(ii) The Presidential Memorandum of June 25, 2013 (Power Sector Carbon Pollution Standards);

(iii) The Presidential Memorandum of November 3, 2015 (Mitigating Impacts on Natural Resources from Development and Encouraging Related Private Investment); and

(iv) The Presidential Memorandum of September 21, 2016 (Climate Change and National Security).

(b) The following reports shall be rescinded:

(i) The Report of the Executive Office of the President of June 2013 (The President's Climate Action Plan); and

MEMORANDUM TO THE CHIEF OF STAFF

FROM: RICK PERRY
SECRETARY OF ENERGY

SUBJECT: STUDY EXAMINING ELECTRICITY MARKETS AND RELIABILITY

A reliable and resilient electric system is essential to protecting public health and fostering economic growth and job creation. The U.S. electric system is the most sophisticated and technologically advanced in the world. Consumers utilize heating, air conditioning, computers, and appliances with few disruptions. Nonetheless, there are significant changes occurring within the electric system that could profoundly affect the economy and even national security, and as such, these changes require further study and investigation.

Baseload power is necessary to a well-functioning electric grid. We are blessed as a nation to have an abundance of domestic energy resources, such as coal, natural gas, nuclear, and hydroelectric, all of which provide affordable baseload power and contribute to a stable, reliable, and resilient grid. Over the last few years, however, grid experts have expressed concerns about the erosion of critical baseload resources.

I am directing you today to initiate a study to explore critical issues central to protecting the long-term reliability of the electric grid, using the full resources and relationships available to the
PARIS AGREEMENT
PARIS, 12 DECEMBER 2015

UNITED STATES OF AMERICA: COMMUNICATION

“August 4, 2017

The Representative of the United States of America to the United Nations presents her compliments to the Secretary-General of the United Nations.

This is to inform the Secretary-General, in connection with the Paris Agreement, adopted at Paris on December 12, 2015 (“the Agreement”), that the United States intends to exercise its right to withdraw from the Agreement. Unless the United States identifies suitable terms for reengagement, the United States will submit to the Secretary-General, in accordance with Article 28, paragraph 1 of the

(signed)
Nikki R. Haley
The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021–2026 Passenger Cars and Light Trucks

AGENCY: Environmental Protection Agency and National Highway Traffic Safety Administration.

ACTION: Notice of proposed rulemaking.
Motor Vehicle Rollback Highlights

• Freeze standards at 2020 levels starting in 2021
  (50→37 mpg on books
  or 37→29 mpg in real world)

• Block California & Other States

  321 to 931 MMT more CO2 by 2035
  ( + .65 ppm)
ENVI RONMENTAL PROTECTION AGENCY 40 CFR Part 60

ACTION: Proposed Rule.

By this notice, the EPA is proposing to repeal the CPP. See 80 FR 64662 (October 23, 2015). In accordance with Executive Order 13783, 82 FR 16093 (March 31, 2017), the EPA has reviewed the CPP and is initiating this action based on the outcome of that review. Specifically, the EPA proposes a change in the legal interpretation as applied to section 111(d) of the Clean Air Act (CAA), on which the CPP was based, to an interpretation that the Agency proposes is consistent with the CAA’s text, context, structure, purpose, and legislative history, as well as with the Agency’s historical understanding and exercise of its statutory authority. Under the interpretation proposed in this notice, the CPP exceeds the EPA’s statutory authority and would
ENvironmental Protection Agency

August 31, 2018

40 CFR Parts 51, 52, and 60

RIN 2060–AT67

Emission Guidelines for Greenhouse Gas Emissions From Existing Electric Utility Generating Units: Revisions to Emission Guideline Implementing Regulations; Revisions to New Source Review Program

Agency: Environmental Protection Agency (EPA).

Action: Proposed rule.
Trump Plan

Efficiency Upgrades Only

7.1 to 8.6 percent in coal demand

Reduces GHG 1.5% below “business as usual” by 2030 (not 17%*)
Methane Rules Rescission

Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources Reconsideration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule. Reconsidering Methane “Fugitive Emissions Requirements”

SEPTEMBER 11, 2018

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

SEPTEMBER 18, 2018

establishes longstanding requirements that had been replaced. The BLM is rescinding the 2016 rule’s novel requirements pertaining to waste minimization plans, gas-capture percentages, well drilling, well completion and related operations, pneumatic controllers,
Trump Rollbacks in the Courts

• Procedural Error
  – Failing to follow legal steps

• Substantive Error
  – Absence legal authority
  – Arbitrary policy choices
Twenty-Five Plus Losses Already

- CAC v. Pruitt (D.C. Cir. 2017)
  - Invalidating EPA Stay of Obama Era Methane Regulations
- NRDC v. NHTSA (2nd Cir. 2018)
  - Invalidating EPA Stay of Civil Penalties for Violating Fuel Efficiency Standards
- EDF v. EPA (D.C. Cir. 2018)
  - Staying EPA “No Enforcement” Policy for Glider Truck Pollution
- NRDC v. Perry (N.D. Cal. 2018)
  - Ordering DOE to Publish Energy Efficiency Standards
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION

INDIGENOUS ENVIRONMENTAL NETWORK and NORTH COAST RIVER ALLIANCE,

and

NORTHERN PLAINS RESOURCE COUNCIL, et al.,

Plaintiffs,

vs.

UNITED STATES DEPARTMENT OF STATE, et al.,

Defendants

and

TRANS CANADA KEYS TONE,

Defendants

CV-17-29-GF-BMM
CV-17-31-GF-BMM

DATED this 8th day of November, 2018.

ORDER

(4) Plaintiffs’ request for injunctive relief is GRANTED. The Court enjoins Federal Defendants and TransCanada from engaging in any activity in furtherance of the construction or operation of Keystone and associated facilities until the
Expected Challenges to Motor Vehicle Rollback

- Arbitrary/Capricious
  - Illogical claims
  - Unsupported claims
  - Obama Record
Safety Claim Example

1. People who buy fuel-efficient vehicles will drive much more, increasing odds of crash.

2. Fuel-efficient vehicles will be more expensive, slowing rate of adoption of newer vehicles with advanced safety features.

3. Automakers will have to make cars lighter to meet safety standards, hurting safety.
Anticipated Challenges to Power Plant Rollback

• EPA authority limited to power plant efficiency

• No enforceable emission limits
Replacing Justice Kennedy
Adding Justice Kavanaugh
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