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## Today's Speakers



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## State of the Energy Industry

- Regulatory drivers
- Cost drivers
- Trump Administration Policy Efforts and Impacts



## House Tax Cuts and Jobs Act

## ITC & PTC

### ▪ ITC

- Extends 30% ITC to “orphaned technologies” (e.g., fiber optic solar, fuel cell, small wind, micro turbine, CHP, and thermal energy).
- Eliminates ITC in its entirety for projects that start construction after 2027

### ▪ PTC

- Reduces PTC by roughly one-third from 2017 level of 2.4¢/kWh to original 1.5¢ base amount of the credit for the 10-year PTC production period.
- Includes statutory “continuous program of construction” requirement to follow IRS guidance.



## Bonus Depreciation

- 100% bonus depreciation effective for property acquired and placed in service after September 27, 2017 and before January 1, 2023.
- Eliminates requirement that property be “original use” (i.e., new) property in the hands of the taxpayer.

## Interest Deductions

- Limits interest deductions by businesses with gross receipts of \$25MM to 30% of the business’s adjusted taxable income. Deductions that are disallowed can be carried forward up to 5 years. Limitation does not apply to certain regulated public utilities.





## Senate Response

- Silent on renewable energy credits, thus preserving current PTC amount and PTC/ITC expiration dates/phase out schedules.
- Creates concern for tax equity investors due to potential “base erosion tax”
- Preserves permanent 10% ITC for projects that begin construction after 2021 or are placed in service after 2023.
- Fails to extend 30% ITC to “orphaned technologies.”
- Largely follows House bill with respect to 100% bonus depreciation, 20% corporate tax rate and limit on interest deductions

## Section 201 Solar Trade Case

- Trade remedies requested earlier this year by Suniva and SolarWorld in petition to the U.S. International Trade Commission (ITC) pursuant to Section 201 of the 1974 Trade Act.
- Unanimous vote Sept. 22 found serious injury from imports.
- Oct. 31 ITC report recommended tariffs on imported solar modules up to 35%. GTM estimated that price impact could be up to 6 cents/watt on imported solar cells and 10-15 cents/watt on modules, which would decline over four years.
  - Final hearing before U.S. Trade Representative on Dec. 6.
  - President Trump required to issue decision by Jan. 13. President has significant discretion to adopt ITC recommendations, implement his own measures, or do nothing.
  - Administration action could result in retaliation by WTO countries



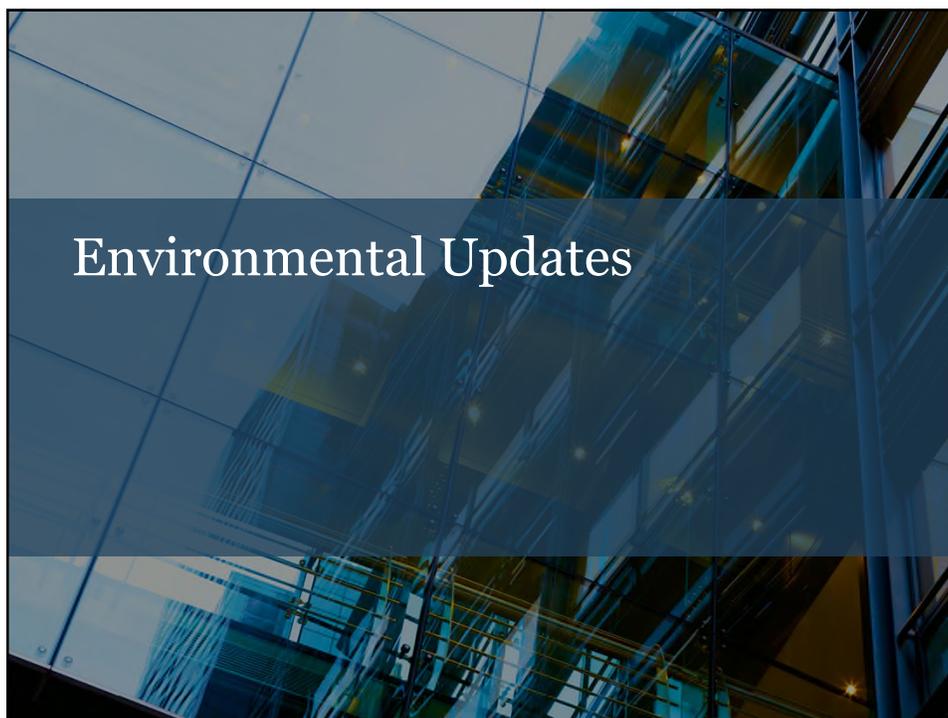
## Federal Energy Regulation Commission (FERC) Action

- FERC regained quorum of commissioners in August and faced a backlog of issues as well as questions about Trump priorities.
- Department of Energy (DOE) Notice of Proposed Rulemaking (NOPR) in Sept. directed FERC to adopt full cost recovery for merchant coal and nuclear plants with 90 days of fuel supply.
  - FERC must act on NOPR by Dec. 11.
  - FERC Chairman hinted at possible interim "stop order" requiring ISO/RTOs to provide compensation while final rule is developed.
- FERC published a NOPR in Nov. 2016 for energy storage and distributed energy resources (DER) to reduce barriers to participation in wholesale electric markets.
  - No set timetable, but FERC could act as soon as next year.
- Various natural gas pipeline applications are at FERC for approval, and many expect litigation from advocacy groups.



## PURPA Reform

- Congress has been considering reforms to the 1978 Public Utility Regulatory Policies Act (PURPA), which requires utilities to enter into PPAs for qualifying facilities, including solar and wind.
- Critics recommend PURPA's purchase requirement should be repealed or exemptions should be expanded, arguing that developers have exploited threshold requirements to unfairly fit larger projects under PURPA limits.
- House Energy and Commerce Committee hearing held on Sept. 6 but no clear consensus emerged on needed changes (if any).
- In the absence of legislation, FERC is not expected to pursue significant reforms at the regulatory level but rather continue light oversight of PURPA requirements in deference to state implementation.



## Environmental Priorities

- Repeal Clean Power Plan;
- Coal ash rule reconsideration;
- Revise methane limits from new oil and gas drilling;
- Reconsider 2015 ozone NAAQS;
- Task force to streamline the NSR permitting process;
- Issue final renewable fuel standard (RFS) fuel production targets for 2018 due by November 30 statutory deadline;
- Clean Water Rule;
- Endangered Species Act.

## Clean Power Plan

- The Obama Administration issued the CPP on October 23, 2015.
- Required states to utilize three “building block” strategies to reduce average CO<sub>2</sub>e emission rate
- Rule implications:
  - Dispatch combined cycle NGCC before other carbon emitting sources
  - Utilize wind, solar to offset lower efficiency thermal sources
- Initial SIPs due Sept. 6, 2016, but extension to 2018 available
- Mini-SIP due for pre-2022 period, start date in 2022, final compliance targets in 2030
- Challenged by 150 entities including 27 states, 24 trade associations, 37 rural electric co-ops, and three labor unions.
- Stayed by United States Supreme Court on February 9, 2016.

## Clean Power Plan Repeal

- March 28, 2017 Executive Order on Energy Independence, Federal Register Notice of intent to review CPP
- October 16, 2017 *Repeal of Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units*, 82 Fed. Reg. 48035
- The U.S. Court of Appeals for the D.C. Circuit staying Clean Power Plan litigation since April 28, 2017.



## Basis for Proposed CPP Repeal

- Trump Administration proposes that the CPP's reliance on Best System of Emission Reduction (BSER) measures beyond those found "inside the fence line" is inconsistent with the Clean Air Act.
- Prior EPA rules issued under Clean Air Act Section 111 required measures that could be applied at a particular facility ("inside the fence line".)
- All prior Section 111(d) rules and approximately 100 Section 111(a) new-source rules did so.
- The proposed rule seeks to find that the CPP's reliance on measures beyond those "inside the fence line" are inconsistent with the Clean Air Act and would repeal the Clean Power Plan.
- Public hearing November 28 in Charleston, W.Va.
- Comments accepted through December 16, 2017.
- Pruitt: EPA will "soon" issue ANPR on potential replacement for the Act
- Heartland Institute pushing repeal of 2011 Endangerment Finding



## Coal Ash Rule

- In 2014 EPA issued regulations creating new requirements for coal ash storage facilities under RCRA.
- In 2016, the Water Infrastructure Improvements for the Nation (WIIN) authorized states to seek delegated authority from the agency to administer permit programs to govern disposal, and would be enforced only through citizen suits rather than through oversight from state or federal regulators.
  - November 20, 2017, D.C. Circuit heard oral arguments on the rule
  - EPA and industry have sought to suspend litigation over portions of the rule subject to reconsideration in light of WIIN
  - ENGOs assert that the test for remand not met, and that allowing portions of the rule to stand unchanged allows ongoing environmental harm.
  - Decision not expected until Q1 2018



## Additional Priorities

- Methane rule for oil and gas:
  - Initial stay of rule struck down as illegal rulemaking
  - November 1: EPA proposed NODAs proposing, in the alternative, a two year stay or three month stay.
- 2015 ozone designations:
  - US EPA published partial list of designations November 6 (attainment only)
  - OTC states passed resolution November 16 requesting immediate issuance of designations for all areas



## Additional Priorities

- June Draft National Program Manager Guidance (2018-2019) states that EPA will “repeal, replace, or modify existing regulations to streamline the federal permitting process and reduce regulatory burdens for domestic manufacturers.”

- October 23, 2017 Report on Executive Order 13783

EPA believes opportunities exist to simplify the NSR application and permit process; to review ways to reduce the length of the permitting process; to review burdens created by the current emissions offsets structure; to improve relationships with the states; and to review the “once in, always in” policy to clarify the means by which a facility currently classified as a major source can become an area source.

## Renewable Portfolio Standard

- File RFS volumes due November 30
- Advanced cellulosic advocates lobbying EPA to increase requirements
- Includes biogas
- Biogas industry lobbying to raise the cellulosic biogas target to incentivize greater use of biogas as fuel
- EPA also evaluating issuance of RINS for electricity generated from biogas

## Implications

- Final CPP target for SIP completion 2016, with extension to 2018—stayed
  - Implications for IOUs that have to justify investments in additional renewable capacity to a state PUC
  - NGCC presumed default choice for new generation
- Even with CPP gone, other regulations imposing additional requirements on coal operations still remain (coal ash rule, MATS)

## Clean Water Rule

- WOTUS – long and controversial history
- Definition has been the subject of decades’ worth of case law and regulatory guidance
- Why? CWA Jurisdiction
- 2006 – *Rapanos vs. United States* – 4-1-4 Split
  - Justice Scalia’s plurality opinion held that the CWA covers only navigable waters and non-navigable waters that have a relatively permanent flow, and wetlands with a continuous water connection
  - Justice Kennedy’s concurring opinion had a much broader view of the jurisdiction of the CWA – significant nexus
- 2015 – Obama era Clean Water Rule based on Kennedy’s standard

## Clean Water Rule

- 2015 – Subject to numerous challenges – 6<sup>th</sup> Circuit stayed the Rule
- Trump – campaigned on withdrawing Clean Water Rule – argues rule is overbroad
- Status of CWR
  - On February 28, 2017 - Trump signed an Executive Order that called to rescind or revise the Clean Water Rule
  - On March 6, 2017 – rule to rescind the Clean Water Rule
  - EPA proposed to extend the effective date of the new rule
  - EPA has indicated that final decision on WOTUS wont be released until March, rewritten regulation not expected until 2018

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## Endangered Species Act

- 1973 Act protects federal endangered and threatened species from “takes”
- Industry dislikes this law – adds additional layers and complication to land use decisions
- Trump administration has been very critical – but little action to date
- But Congress may take the initiative

## Implications

- Continued uncertainty on Clean Water Rule – difficult for developers
- States’ role?
- Increased citizen suits?
  - Scope of WOTUS?
  - Challenges to agency decisions and permits?

## Questions?



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