



Letters

Winter 2021

E&E Legal Returns to Conservative Watchdog Role with New Administration



Joe Biden ran on a promise that he would return to the devastating and economy-killing "climate change" policies of the Obama-era. Not coincidentally, policies that would give China a tremendous manufacturing advantage in the world economy since they are not beholden to the same unreachable emission reduction "goals" as the U.S. and other Western countries.

It didn't take Biden long once he swooped into the White House to begin undoing President Trump's Energy Dominance agenda. Labeling climate change a "maximum threat," in just the first week alone, the far-left leader ended the U.S. permit to build the Keystone XL pipeline – something likely done illegally – as well as commit the U.S. once again to the anti-American Paris Climate Treaty. He also "moved to discard more than 100 'harmful' environmental proclamations, memoranda or permits signed by the Trump administration," according to Newsweek. Finally, he's laid out an extensive agenda for not only eliminating steps towards creating

an energy independence America, but for adopting the Green New Deal.

During the Obama Administration, E&E Legal emerged as a leading watchdog regarding energy and environmental issues. The group became a national leader in strategic free market environmental litigation. For example, we exposed widespread corruption between EPA officials and green lobbyists in the drafting of the Clean Power Plan, received international coverage for a multi-state Attorneys General effort to shake down Exxon using a contrived smear campaign bankrolled by the Rockefeller Foundation, and we brought several federal suits over the renewable energy standards using the Dormant Commerce Clause.

After four years of the Trump Administration, where free-market environmentalism was on offense, E&E Legal is once again called upon to become a loyal opposition to policies that will devastate the economy and create unthinkable pain and misery. As seen recently in Dallas and Houston, it's no longer a question of when this will occur, now it's what the level of destruction will be.

On March 8, the Energy & Environment Legal Institute (E&E Legal) filed a Freedom of Information Act (FOIA) request with the U.S. Department of Energy (DOE), concerning the new Administration's recently formed Task Force on

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An E&E Legal SEC petition accusing First Energy, Apple, and other corporations of false and misleading ads re: climate results in a deal with First Energy.

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Texas Exposes Biden's Climate Folly

by Steve Milloy, Senior Policy Fellow
As Appearing on *InsideSources*



Pres. Joe Biden promised to make climate a central organizing principle of his administration. White House climate czar Gina McCarthy has promised to make Biden's climate policies "irreversible."

It would be a good time for Biden to reevaluate these promises in the wake of the manmade winter storm catastrophe that just struck Texas.

Although Texas doesn't often suffer the sort of severe storm that hit on Valentine's Day weekend, life is what happens when you're busy making other plans.

Possibly contributing to Texas' lack of preparedness for severe winter weather was the winter forecast that the federal government had issued for December 2020 through February 2021. The National Oceanic and Atmospheric Administration (NOAA) forecast in October that Texas had a 70 percent chance of having a warmer than normal winter.

The lessons are already beginning to mount: Weather is unpredictable and government forecasters don't necessarily make it less so. And if government forecasters can be so tragically wrong in such a short-term forecast, how much confidence can we place in its climate predictions that extend decades out to the end of this century?

Although weather forecasters sounded alarms about the approaching severe cold a week in advance of Valentine's Day weekend, the Texas

grid operator ERCOT did nothing about it. Records indicate that as the storm approached, the ERCOT board—one-third of whose members don't even live in Texas—spent less than 40 seconds discussing it. That all but guaranteed disaster.

ERCOT's failure to recognize the gravity of the approaching extreme weather ensured Texas was going to rely on wind turbines to keep operating and supplying vital electricity to the Texas grid. It also meant back-up natural gas and coal power plants weren't expecting and weren't prepared to come online in case of wind turbine failure.

When the wind turbines froze, disaster quickly ensued. As many as 4.3 million people were soon left without power in deadly frigid temperatures. Rolling blackouts led to increased demand on the natural gas system, so much so that Texas shut off gas exports to Mexico, resulting in 4.7 million people without power there. ERCOT said the Texas grid was "seconds or minutes" away from a blackout that could have lasted months.

This tragedy was long in the making, foreseen, and avoidable.

The most reliable electricity generation sources in extreme weather are nuclear and coal plants. Texas doesn't have much nuclear power and no new plants are being built or are even on the drawing board. Texas has been getting rid of coal plants since the mid-2000s, including the loss of 12 coal plants as a result of a Sierra Club-brokered Wall Street buyout of a major Texas utility company, a buyout that eventually went bankrupt.

The coal plants decommissioned and those not built were replaced by wind farms, which only work when the wind blows at the right speeds, which don't tend to occur during extreme weather.

ERCOT has known for years that shedding coal plants in favor of windmills was leaving the grid vulnerable. But it thought that this problem might only occur during a summer heatwave when air conditioning use soars. Life happens.

Arrogant radical environmentalists cheered Texas' reliance on wind turbines and downplayed concerns. In a 2019 report by E&E News, the director of the Texas chapter of the Sierra Club, conceded energy output from wind and solar depends on weather conditions, but then added, "the doomsday predictions haven't come true."

They have now, and "irreversibly" so for the dozens who died because of blackouts caused by foolish over-reliance on wind.

Dependence on undependable on wind and solar are not unique to Texas. California has also been shedding fossil fuel power for so-called "renewables," only to be forced into rolling blackouts when the renewables failed.

Like it or not, our society needs electricity—not almost all of the time, but all of the time. Electricity must be reliable and affordable. Grids must be designed and maintained by engineers keeping those goals in mind versus sociology majors and politicians operating under green dogma and political correctness.

None of this bodes well for Biden's plan to make us 100 percent reliable on wind and solar for electricity by 2035. No doubt that is why Biden's media allies are desperately trying to spin Texas' frozen windmill disaster into one caused by fossil fuels and Texas's independent grid set-up. Indeed, Rep. Alexandria Ocasio-Cortez raved what Texas needed was even more Green New Deal.

She would be right only if her unending production of hot air could keep windmills turning. □

CA Skyrocketing Utility Bills Reaching 'Point of Reckoning'

by Katie Grimes, Senior Media Fellow
As Appearing in the California Globe



What happens to the electricity grid and tiered pricing when Gov. Newsom's mandate of all-electric cars becomes reality by 2035?

Last week the Globe (early March) met with energy expert Jesus Arredondo and discussed the recent California Public Utilities Commission meeting that centered around themes and concepts raised in the CPUC White Paper, Utility Costs and Affordability of the Grid of the Future – California electric and gas cost and rate trends over the next decade.

“The white paper warns that the burden of continually rising utility bills will likely derail California’s decarbonization work if left unaddressed,” Arredondo said. “Worse, the rising costs are hitting customers who’ve been hit hard by pandemic-driven job losses and sheltering at home the hardest.”

California’s “decarbonization work” is the state’s and CPUC’s flawed scheme to reducing greenhouse gas emissions through moving to an all-electric grid, away from oil and gas, coal, hydroelectric and nuclear power.

We discussed the tiered energy pricing now prevalent in California, which penalizes residential ratepayers for household electricity used after 4:00pm, when Californians get home from work and cook dinner, do laundry, wash dishes, bathe children, do homework on computers, and watch television.

Even summer “peak” rates appear to be about 40% – 200% higher, judging from the billing statements.

But Arredondo asked rhetorically, what happens to the electricity grid and tiered pricing when Gov. Gavin Newsom’s mandate of all-electric cars becomes reality by 2035?

It will likely be a lot worse if the current course is maintained.

Arredondo explained that the daily optimum solar energy generation time is 10:00am to 4:00pm. But the sun

goes down right when most people get home from work and would plug the electric cars in. Besides the all-electric car goal sounding preposterous, the huge load on the grid after 4:00pm would be devastating.

In 2018, the approximate total number of automobiles registered in California was 15.1 million. Imagine adding even half — 7.5 million electric cars – to the electricity grid, which is already strained. “We are trading energy independence for dependence on Cobalt,” Arredondo said. “We don’t have trees that produce Cobalt,” he added.

Most of the world’s cobalt is mined in the Democratic Republic of Congo. Cobalt is used in every lithium-ion rechargeable battery on earth. Our iPhones, iPads, laptops and electric vehicles all use lithium-ion batteries. According to the Cobalt Institute, the lithium-ion battery is the most commonly used type of battery with cobalt being found in the cathode.

Environmentalists don’t talk about the poor Congolese children used as slave labor to mine Cobalt. Why would politicians prioritize electric cars, and indirectly, the slavery of Congolese children, when we have energy independence in the United States? No children are enslaved and used in the U.S. to mine for coal, or to extract oil and gas, or generate power at hydroelectric dams, or at nuclear power plants.

The continuing unsound decision-making to remove traditional power sources in California is what is behind the ever-increasing utility rates, among other silly notions from the good-idea fairies.

Last week the Globe reported 3.3 million Californians have unpaid utility bills totaling \$1.25 billion due to “COVID pandemic impacts.” Those “COVID pandemic impacts” are Gov. Newsom’s ordered business closures and job losses, leading to the inability to pay utility bills.

Arredondo said the Energy Institute at the UC Berkeley Haas School of Business and non-profit think tank Next 10 issued a new report, Designing Electricity Rates for An Equitable Energy Transition, which reveals that the State’s three largest investor-owned utilities (IOUs) charge residential electricity customers much higher prices than are paid in most of the country—prices that are two to three times higher than the actual cost to produce and distribute the electricity provided.

“These high prices result from uncommonly large fixed costs that are bundled into kilowatt-hour prices and passed on to customers,” Arredondo explained. “These costs cover much of the generation, transmission and distribution fixed costs, as well as energy efficiency programs, subsidies for houses with rooftop solar and low-income customers, and increasing wildfire mitigation costs.”

“The report also points to compounding concerns over the high costs, particularly what the report calls the ‘inequity of their distribution.’ Specifically, the report says that as wealthier households transition to rooftop solar, the fixed costs are distributed through a smaller volume of kilowatt-hours delivered, raising the costs even more for remaining, lower-income customers.”

The Cal/Next 10 report advocates for an overhaul of how utilities bill customers for energy usage. The report urges that utilities’ usage rates need to be lowered to reflect the true cost of generating and transmitting electricity, as California has the fourth-highest residential electricity prices in the country. Then, utilities’ fixed rates need to be increased, but they should also be tied to income, so higher earners pay more – as part of their concern with “equity.”

“This would be a sharp change from the current scheme, which the authors argue is regressive because it requires lower-income people to spend a higher proportion of their paychecks on electricity,” Arredondo explained.

As for programs that benefit certain customers at the expense of others — like net metering for rooftop solar owners and bill assistance for lower earners — the report’s authors wrote that those initiatives and other utility “public purpose” programs should be part of the state budget as upfront costs, rather than as ongoing expenses in electric rates.

Arredondo told of a press interview report co-author UC Berkeley Prof. Severin Borenstein did with Politico, where he warned, “The path of least resistance is just to keep raising electricity rates, but there’s increasing recognition that’s just not going to work. We’re coming to a point of reckoning here, and I hope the Legislature and the CPUC are going to step up and say we really need to reimagine the way we pay for electricity.” □

Biden's Interior Secretary nominee Rep. Deb Haaland

by Greg Walcher, Senior Policy Fellow
As appearing in *The Daily Sentinel*



The Senate Energy and Natural Resources Committee held confirmation hearings this week on President Joe Biden's Interior Secretary nominee, Rep. Deb Haaland. The committee had already approved the nomination of Jennifer Granholm to be Secretary of Energy, and the Environment and Public Works Committee already approved the EPA Administrator nominee, Michael Regan. Those hearings were civil, and the votes bipartisan. Rep. Haaland was not so lucky. Her hearings were contentious and sometimes angry.

Haaland (a member of the Laguna Pueblo) was elected to Congress from New Mexico in 2018, one of the first two Native Americans ever elected to Congress. She will become the first to serve in the Cabinet, making history by heading the department responsible not only for America's public lands, but also for its relationship with native tribes, including administering their treaties and trust funds. It is a milestone long overdue, and her nomination might be universally applauded, but for the fact that her views on environmental issues seem so out of step with many tribes, and with the western states from which Interior Secretaries are traditionally chosen.

Haaland is a lawyer and political activist who, before her one term in Congress, worked as a local administrator and as a field organizer for Obama campaigns. She is

said to be part of the "keep it in the ground" movement, seeking to stop America's use of oil and gas, and she has advocated banning fracking, which would eliminate much of today's energy production. In her congressional campaign, she vowed to vote against fossil fuel infrastructure in general, so she was grilled sternly by western senators at the committee hearing. The Interior Department's mission includes managing public land mineral and energy resources, and leasing some of those resources for production. Haaland calmed the committee with a more conciliatory tone, though, assuring members "there's no question that fossil energy does and will continue to play a major role in America for years to come." She said Interior should continue to issue permits "as a general matter," and acknowledged that Interior relies partly on funding from energy production royalties. "But," she warned, "We must also recognize that the energy industry is innovating, and our climate challenge must be addressed."

Several western senators were not very reassured, but she will nevertheless be confirmed by the Senate, now under the control of the same party as the President. Strangely, a staffer at the Center for Western Priorities, an environmental group which supports her nomination, says "She understands at a very real level, at a generational level, in her case going back 30 generations, what it is to care for American lands." So, you don't care for American lands if you have lived there only five generations? Do you have to live somewhere for six, 10, 20 — what is the cut-off point? Not to sound like a journalistic fact-checker, but everyone has ancestry that goes back, not just 30 generations, but hundreds. I

can trace my lineage to the middle ages, as could Haaland, and we both undoubtedly share some ancestors. We are kin, and we all care about public lands.

Some westerners will also be concerned about Regan's policies at EPA. He worked there under President Clinton, then for a large national environmental group, and more recently headed the North Carolina Department of Environmental Quality. He says his charge is to restore the reputation, morale, and science-based decisions of EPA, which he thinks President Trump undermined and tainted.

Others worry about Granholm at Energy. She has recently been an adjunct professor at Berkley, but as governor of Michigan, she supported the Obama-era federal bailout of that state's auto industry, in exchange for the industry's commitment to massive investments in electric (coal-powered?) cars.

Still others are nervous about what will come from the White House itself, with jet-setting John Kerry as "Special Presidential Envoy for Climate," and Gina McCarthy serving as "National Climate Advisor." McCarthy was the Obama-era EPA administrator who promulgated the coal-killing "clean power plan," which was blocked by the Supreme Court as an assertion of authority EPA does not have.

I share some of those concerns, and mostly we know what is coming, because we have seen this movie before. There is a new sheriff in town, and he has brought his posse along. I hope they'll turn down the rhetoric and acknowledge that, while reasonable people may differ on policy approaches, we all care about the environment. That would at least get them off on the right foot. □

Subway science derails Biden's war against fossil fuels

by Steve Milloy, E&E Legal Senior Policy Fellow
As appearing in the *Washington Times*



New study about the air in big city subway systems should diffuse EPA-funded research

“[In Texas] ... the air is nothing but air. You can feel the air in New York. It's got character” — Tony Randall to Rock Hudson in “Pillow Talk.”

A new study about the air in big city subway systems, including New York City's, sheds some light about the nature of the dirtiest part of urban air. More importantly the study should go a long way to diffusing the coming Biden war against fossil fuels.

The study unsurprisingly reports that the air quality in subway stations and on subway trains is awful. That may not be news, but how awful it is should be.

In the PATH subway system between New York and New Jersey, for example, the average level of soot and dust particles (called PM2.5) in subway stations was measured at 65 times higher than the level permitted in outdoor air by EPA.

The very worst air in the subway system had 50% more PM2.5 than the very worst air in Chinese cities on their worst days of the past decade.

What does that have to do with the Biden administration?

The Obama EPA decided that any exposure to PM2.5 — even

one particle — could cause death within hours, thereby turning PM2.5 into essentially the most toxic substance known to man. This characterization of PM2.5 in outdoor air was used to issue power plant emission rules that irreparably wrecked the coal industry.

During the Trump years, another EPA panel of independent science advisors completely upended the designation of PM2.5 as a killer. The Trump EPA also took a number of actions to roll back major Obama EPA rules that had been justified on the grounds that PM2.5 killed hundreds of thousands of Americans every year.

But all that has changed now that Democrats are back in charge of the EPA and President Obama's EPA chief, Gina McCarthy, is running Biden administration environmental policies from her White House post as “climate czar.” The Trump era changes are targeted for rollback by the Biden team and perhaps even by the Democrat-controlled Congress through the Congressional Review Act.

It's already game on for EPA-funded researchers who claim that PM2.5 is a killer. Last week, Harvard researchers published a study claiming that PM2.5 kills 12.5 million people per year. That's about one-fifths of all death globally each year and more than five times more deaths worldwide due to COVID-19. The Harvard researchers claim that 8.7 million of those 12.5 million deaths are due to PM2.5 from fossil fuel emissions from tailpipe and smokestacks.

You can imagine how such claims will be used by the Biden administration in its bid to “irrevers-

ibly” make oil, natural gas and coal illegal, as Ms. McCarthy recently stated.

As I have written on this page before, there is no credible science to back up the claim that PM2.5 in outdoor kills anyone, let alone 12.5 million people each year. The new subway study is just another and the latest nail in the coffin of PM2.5 alarmism.

The PATH system between New York and New Jersey, carries more than 80 million passengers per year, about 280,000 per week day (pre-COVID). These passengers were daily exposed to extraordinarily high levels of supposedly the most toxic substance known to man.

If it is true that PM2.5 is a killer, where are the bodies?

There aren't any. In the 150 years of underground rail travel in New York City, there are no reports of PM2.5 in subway air — which can be worse than the worst air in heavily polluted China — being blamed for any death. The same is true for the other subway systems in the study.

How can this subway air reality be reconciled with the claims of the new Harvard study? They can't be. Something is obviously seriously wrong somewhere.

As the Biden war against fossil fuels proceeds, the Biden EPA will undoubtedly try to terrify the public about “deadly” fossil fuel emissions and make unfounded claims about lives saved in order justify various regulatory actions. But while New York City air undeniably has a lot of “character,” that is many subway stops away from it killing anyone. □

E&E Legal's SEC Petition Results in First Energy and Steve Milloy Agreeing to Climate Disclosures

by Steve Milloy, Senior Policy Fellow
As appearing on *Junkscience.com*



First Energy Corp., one of the largest electric utilities in the US, has agreed to make certain climate disclosures in exchange for Steve Milloy withdrawing his climate disclosure-related shareholder proposal.

Milloy's shareholder proposal requested that First Energy disclose to shareholders the costs and benefits of its voluntary emissions cuts.

The agreement between Mil-

loy and First Energy begins on May 31, 2021 and covers the next three years.

It requires that First Energy disclose on its web site its annual emissions as a percentage of global emissions.

"I applaud First Energy for being the first company in the world to agree to present its emissions in the larger context of global emissions," Milloy said.

"This is an important first step in getting companies to discuss honestly the insignificance of their emissions cuts," Milloy added.

On August 19, 2019, Milloy authored and E&E Legal filed a petition to the U.S. Securities and Exchange Commission (SEC) to take action to prevent and prohibit registrants from making false and misleading statements with respect to global

climate change. The petition is based on a number of undisputed facts and realities including:

- Manmade greenhouse gas emissions are presently about 53.5B tons of CO₂-equivalent annually.
- Manmade greenhouse gas emissions are growing with no end in sight.
- Even if US emissions (about 7B tons) went to ZERO, the rest of the world's emissions (46.5B tons) are way above the Kyoto Protocol goal (i.e., below 35B tons).
- Even if the US stopped emitting today, the difference in atmospheric greenhouse gas concentrations and global temperature would not be meaningfully different over the 21st century from the US not cutting emissions. □

Conservative Watchdog (Cont.)

Scientific Integrity. Specifically, the group is concerned with the new Administration's focus on "equality," which is a buzzword used across many of the highly controversial efforts already instituted by Biden since taking office. It's also found in Biden's January 27, 2021, Memorandum on Restoring Trust in Government Through Scientific Integrity and Evidence-Based Policymaking.

In addition to seeking such information as the Task Force's members, the date appointed, and charters or mandates governing the group, the FOIA also seeks definitions of several terms found in the January 27, 2021 memorandum. These include the Administration's promise of "improper political interference," "suppression or distortion of scientific or technological findings, data, information, conclusions, or technical results," and a definition of "all genders, races, ethnicities, and backgrounds."

"I spent thirty-three years at the EPA, and I have litigated numerous

highly complex environmental law cases both for the government and as a plaintiff against it," said David Schnare, E&E Legal's Founder and Chairman Emeritus. "What I see coming out of the blocks is the new Administration seeking to codify new 'legal' terms – without proper due process or legislative discourse – based on a particular political philosophy that runs counter to basic legal tenets of the country."

Schnare pointed specifically to a clause from the January 27th Memorandum that promises "the equitable delivery of the Federal Government's programs." "What does 'equitable' mean, and more concerning when you consider a government as large as this one, how will this be achieved? Will there be a new 'Equitable Czar' who will be in charge of making unilateral decisions based on an undefined sense of fairness?! This is what we're trying to determine through our FOIA request," he added.

It's clear the Biden Administration will use task forces meeting in secret to conduct much of

his "climate" policies. Backroom dealing without using normal legislative and regulatory processes is how business is conducted in China, not the U.S. We anticipate a very busy four years shining light on an Administration that's determined to kill jobs, destroy the economy, and end the quality of life we once enjoyed in America. □

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