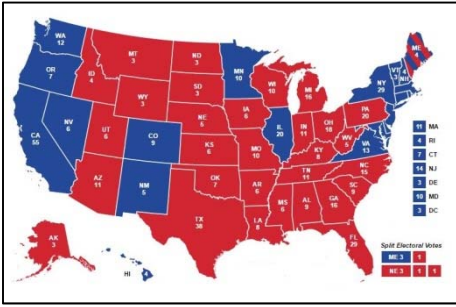


Forecasting Environmental Regulatory Reform in the New Administration

February, 2017

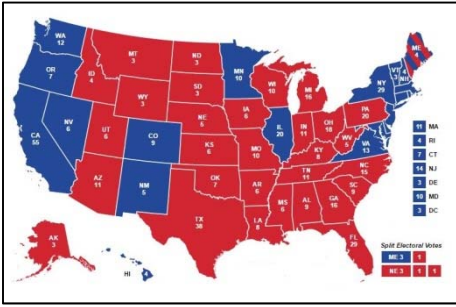




Outline

- Status Update on Actions & Appointments
- Broad Reforms to Expect on Energy
- Specific Environmental Rule Discussions
- Debunking Some Post-Election Myths





Outline



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PRESIDENTIAL ACTIONS ON ENV. REGULATIONS



1. Issued an Executive Order to expedite approvals for high priority infrastructure projects (e.g., pipes, LNG exports, etc...)
 - Chair of White House Council on Environmental Quality (CEQ) determines what qualifies as a “high priority infrastructure project”
 - Triggered by request of Governor, head of executive department/agency, or Chair’s own initiative.
2. Placed a freeze on regulations from all agencies, pending final appointments of Cabinet members.
3. Initial media blackout on EPA and other agencies (partially lifted).
4. Initial freeze on EPA staff awarding any new grants/contracts (lifted).
5. Issued an Executive Order to require the elimination of two regulations for every new one enacted.



PRESIDENTIAL ACTIONS ON ENV. REGULATIONS



6. Issued a Memorandum expediting approval of the Keystone XL Pipeline.
7. Issued a Memorandum directing the Secretary of the Army (i.e. the U.S. Army Corps of Engineers) to review and approve in an expedited manner the Dakota Access Pipeline.
8. Issued a Memorandum requiring the Secretary of Commerce to develop a plan to require American-made steel for all new, expanded, or retrofitted pipelines in the United States, to the maximum extent possible. The plan is due in six months.
9. Issued a Memorandum requiring all federal agencies to review manufacturing regulations and require the Secretary of Commerce to seek public input from the public on how to streamline those rules for 60 days, with a report containing proposals 60 days after that.



INITIAL CONGRESSIONAL ACTIONS ON REGULATIONS



Rule	Description/Status	Announcement/Action
Oil and Gas Methane NSPS for New, Recon., Mod. Sources	June 2016: Final rule published. July 2016: Multiple suits filed challenging the rule.	Jan. 6, 2017: HJR 22 disapproving rule introduced.
DOI/OSM - Stream Protection Rule	Dec. 2016: Final rule to impose nearly 500 changes to existing regs. Jan. 2017: Multiple challenges filed in courts and requests to stay rule.	Feb. 1, 2017: House votes to disapprove rule (Vote 228-194). Feb. 3, 2017: Senate votes to disapprove rule (Vote 54-45). Feb. 16, 2017: Signed by President Trump.



ENERGY/ENVIRONMENTAL NOMINATIONS



AGENCY	NOMINEE	STATUS
Env. Prot. Agency	Administrator Scott Pruitt	Confirmed – Feb. 17, Vote 52-46
Env. Prot. Agency	Regional Admins.	Pending appointment of Regional Administrator Reg. 6 Acting Admin. Sam Coleman
Council on Env. Quality	Chair	Pending appointment of Chair
Energy	Secretary Rick Perry	Voted out of Committee 17-6; pending full vote
Interior	Secretary Ryan Zinke	Voted out of Committee 16-6; pending full vote
Interior	Surface Mining Direct.	Pending Nomination of Director
Interior	USFWS Director	Pending Nomination of Director
Agriculture	Secretary Sonny Perdue	No hearing set – Potentially Mid-Feb.
FERC	Chairman Cheryl LaFleur	Term Expires June 30, 2019
FERC	Commissioner Colette Honorable	Term Expires June 30, 2017
FERC	Commissioner	Norman Bay resigned. Potential replacement: Barry Smitherman (former PUCT and RCT Chairman), Neil Chatterjee (COS of Sen. McConnell), and Patrick McCormick (Special Counsel to Sen. Energy and Nat Res. Committee)



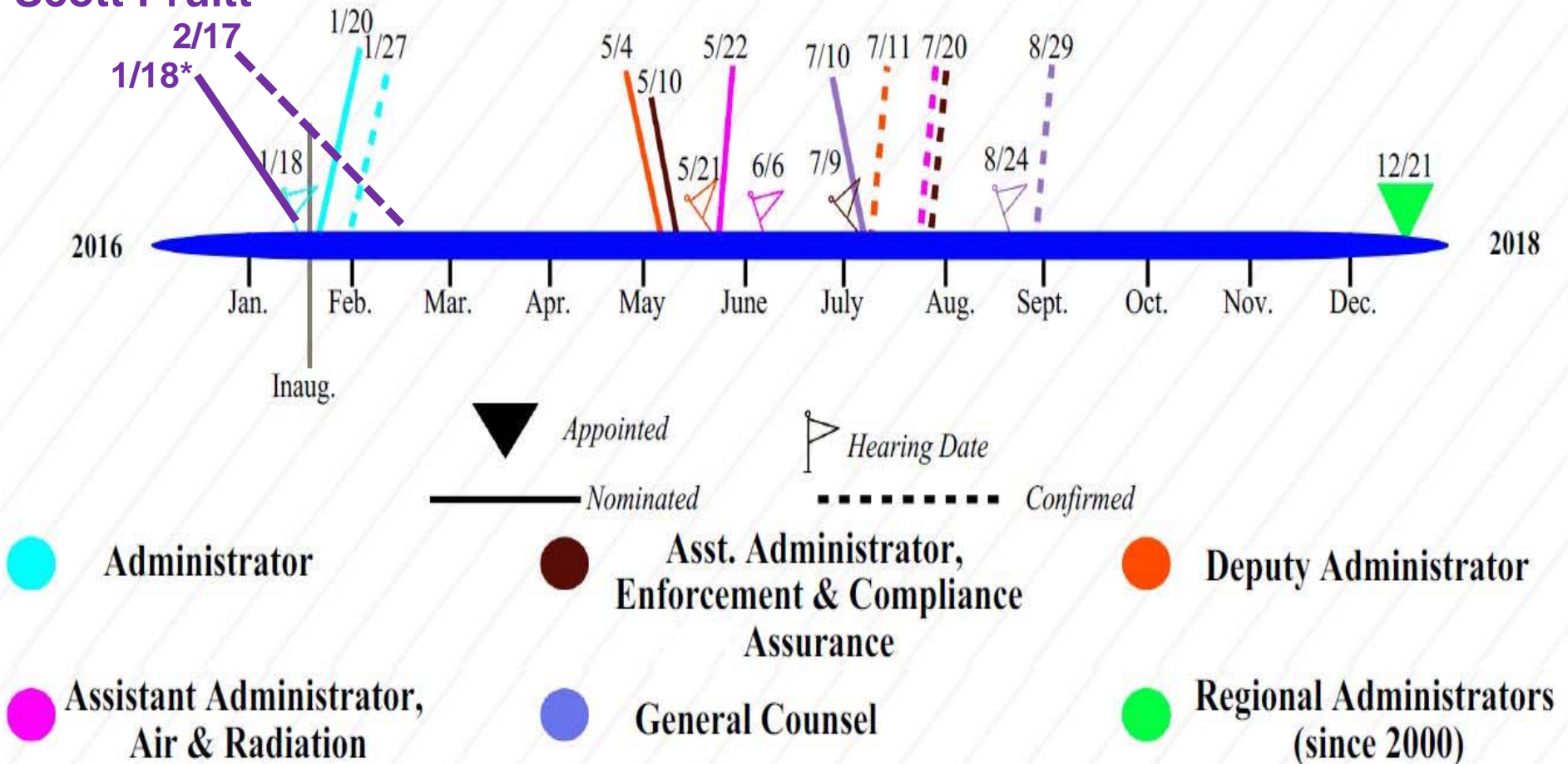
OTHER NOMINATIONS INFLUENCING ENERGY/ENV.



AGENCY	APPOINTEE	STATUS
Attorney General	Attorney General Jeff Sessions	Confirmed – Feb. 8, Vote 52-47
State	Secretary Rex Tillerson	Confirmed – Feb. 1, Vote 56-43
Commerce	Secretary Wilbur Ross	Voted out of Committee (voice vote); pending full vote
Labor	Secretary Alexander Acosta	Committee hearing TBD (replacement)
Transportation	Secretary Elaine Chao	Confirmed – Jan. 31, Vote 93-6
Small Business Admin.	Administrator Linda McMahon	Confirmed – Feb. 14, Vote 81-19
Office of Man. & Budg.	Director Mick Mulvaney	Confirmed – Feb. 16, Vote 51-49

Average Timing of Post-Transition U.S. EPA Nominations/Confirmations/Appointments Since 1988*

Scott Pruitt



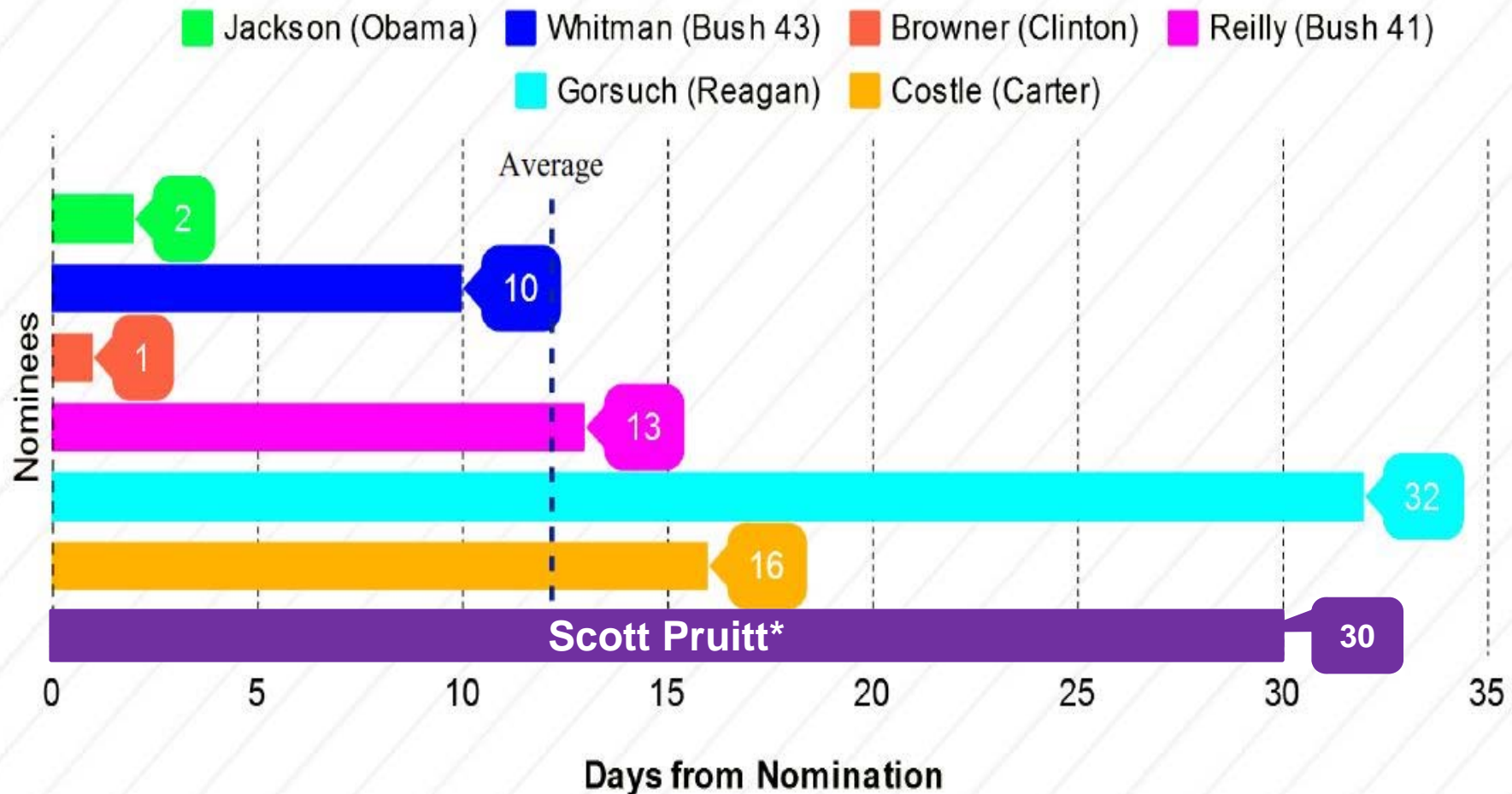
*This information includes dates for confirmed nominees to equivalent HQ offices in the year following inauguration, and does not include returned or withdrawn nominees.

*** Date of hearing; prior to introduction and/or referral.**

Graphic Source: AAPCA, January 2017.

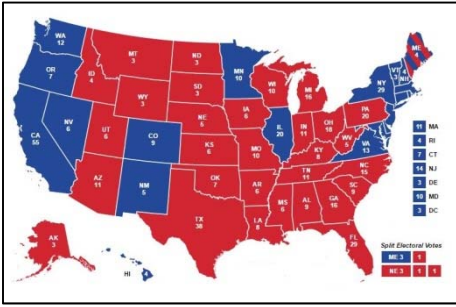
Administrator

Post-Transition EPA Administrator Confirmations Since 1976



* Counted from date of hearing, which was prior to introduction and/or referral.

Graphic Source: AAPCA, January 2017.

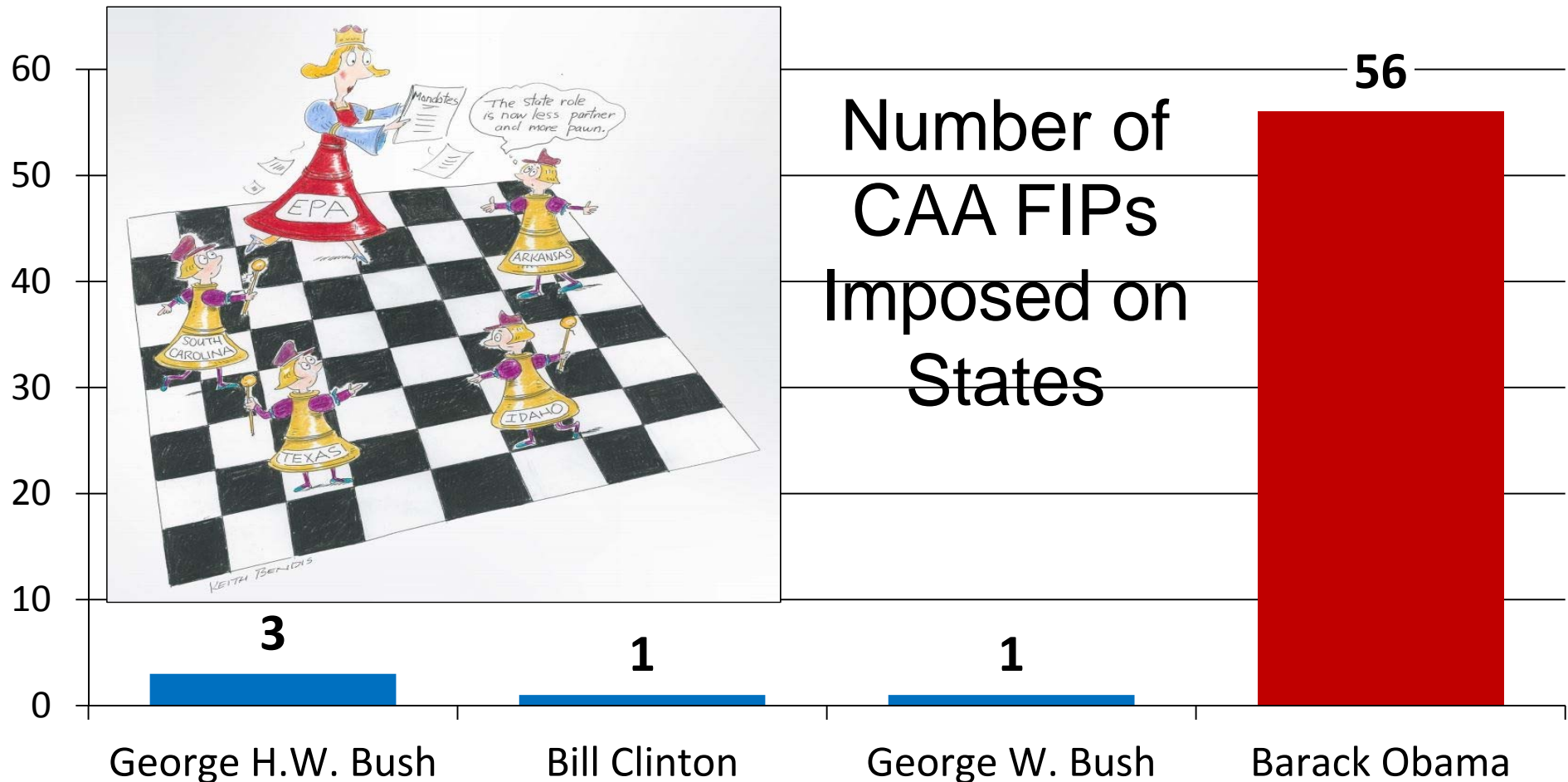


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- **Broad Reforms to Expect on Energy**
- Specific Environmental Rule Discussions
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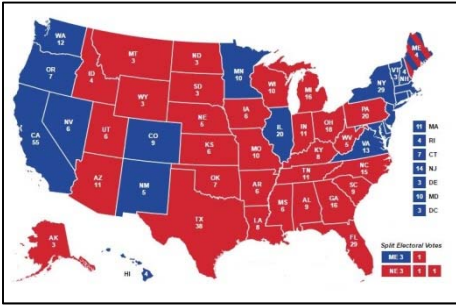
REFORM # 1: End The Age of Coercive Federalism



Source: Testimony of William Yeatman, Subcommittee on Env. Science, Space, & Tech. Mar. 23, 2016.

Stop FIP-First Approach: Allow time for state implementation plans (SIP) revisions before issuing federal implementation plans (FIPs)

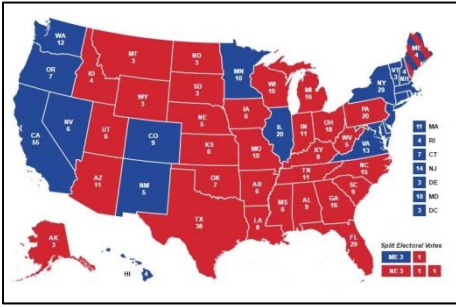




Overview: Congressional Review Act (CRA)

- 1996 law which provides Congress authority (with Presidential approval) to overturn major regulations that were finalized within 60 working days of the end of the previous legislative session
- Debate over cut-off date for regulations subject to review:
 - June 13, 2016 commonly cited date
 - Could be earlier and debate whether previous rules were adequately submitted to trigger timeline
- Already used for Stream Protection Rule





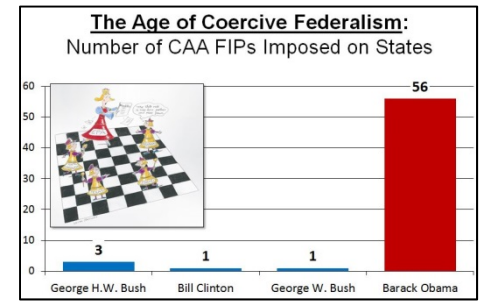
Role States Might Play in Facilitating Reform

- Offensive State Actions:
 - Catalyst for key regulatory findings (e.g., “endangerment”)
 - Compel prioritization of state priority issues
- Preemptive State Actions:
 - Identify & compel approval of unresolved SIP gaps
- Defensive State Actions:
 - Help EPA & other agencies fend off D-state attacks
 - Respond to citizen suits and other collateral attacks



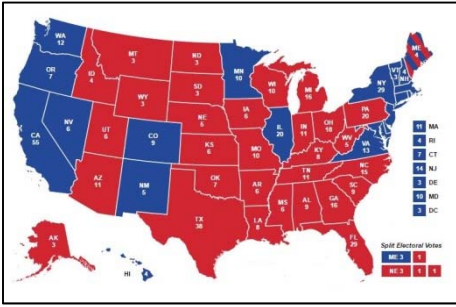


Other Needed Broad Reforms on Energy



- Reform NEPA Guidance to Comport with Original Intent:
 - Retract illegitimate guidance which arguably violated the Vacancies Act
 - Restore effective & efficient reviews with appropriate scope
- Eliminate Reliance on Claimed Co-Benefits of Rules
 - Benefits must come from pollutant being regulated
 - No benefits should be assumed for reductions below NAAQS
- Re-establish Credibility with Science-based Approach
 - Reform scientific review process to ensure objectivity
 - Restore legitimate standards for causation (monitors > models)



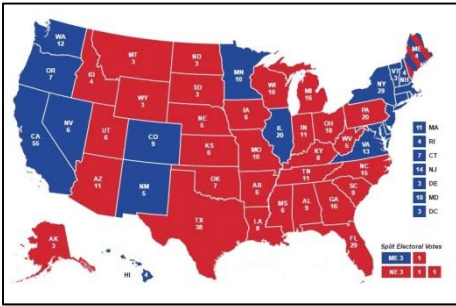


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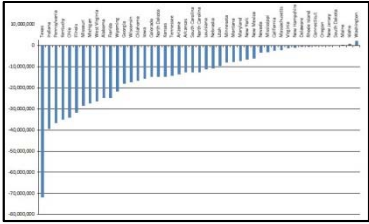




Environmental Rules Likely to be Walked Back

- Greenhouse Gas Regulations
 - EGUs (111 (b) & (d))
 - Methane Rules
- Other Air Regulations
 - Ozone/Cross-State Air Pollution Rule
 - Mercury & Air Toxics Standards Rule
 - Regional Haze
- Other Coal-Specific Rules
 - Coal Combustion Residuals Rule
 - BLM Leasing / Royalties
- The Rest: RFS, WOTUS, ESA



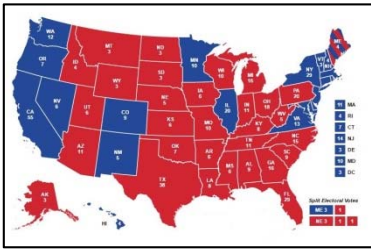


Power Plant GHG Rules: Pre-Election



- Clean Power Plan (111(d) Existing-Source Rule)
 - Oct. 23, 2015 – Final Rule published in *Federal Register*
 - Feb. 9, 2016 – Supreme Court grants stay of the rule
 - Sept. 27, 2016 – *En Banc* hearing of D.C. Circuit
 - Dec 2016 - Feb. 2017 – D.C. Circuit opinion anticipated
- 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 at D.C. Circuit



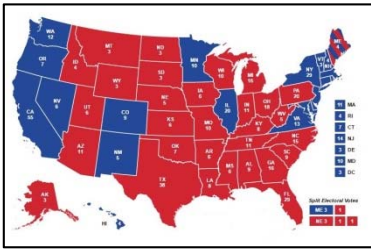


Power Plant GHG Rules: Post-Election?



- Immediate Action: Walking Back the Clean Power Plan
 - Different Actions Depending Upon If/When/What D.C. Circuit Acts
 - Potential to withdraw rule and issue Reconsideration; make clear administration is making different policy decision (rendering judicial proceedings advisory)
- Next Steps: How far will things be walked back?
 - Stop short of endangerment finding? Common law nuisance risks?
 - All Pain, No Gain: no material benefit to climate & not worth the cost
 - Debate about *Mass. v. EPA* “requires” v. “allows” GHG regulation under CAA 111
- Long-term Fix: Legislative Action?

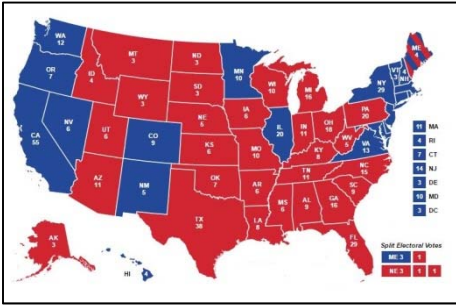




Other GHG Regulations: Post-Election?



- Methane Rules?
- Revisit GHG BACT Triggers for “Anyway” Sources?
 - Codify GHG BACT Guidance to not redefine a source until decisions made on endangerment
- NSR Reform for Efficiency Improvements?
- Vehicle Efficiency Standards?
 - 2016 Update particularly unpopular with car makers



Outline



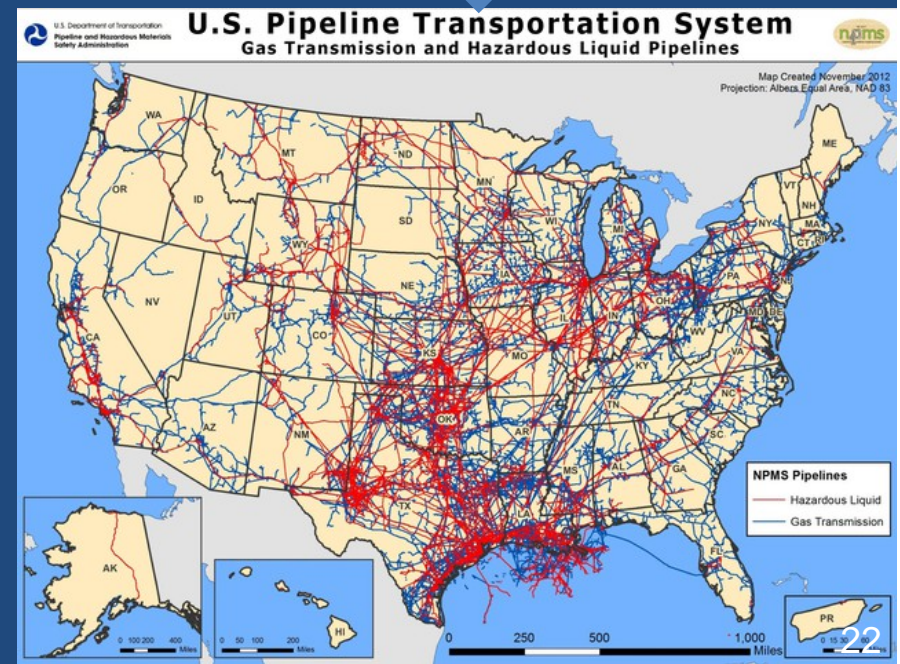
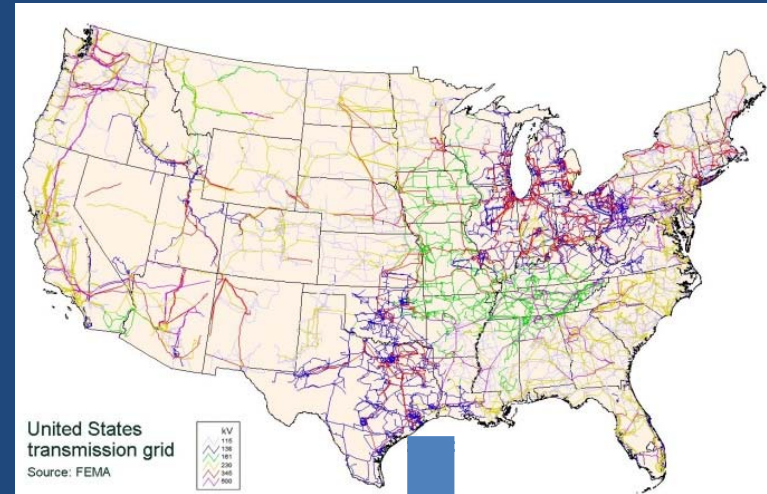
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Myth #1: Oil & Gas States Should Want the CPP Because it Helps Gas

Truth:

1. Existing simple cycle gas plants would be forced to retire if plants are regulated for GHGs by EPA.
2. New NGCC would be suppressed by market distortions due to renewable-forcing policies.
3. All-in price of power impacts will significantly increase - hurts oil and gas E&P, refining and petrochemical production.
4. CPP BSER precedent is very dangerous for Oil/Gas /Petrochemical source categories because pipes would = "System."

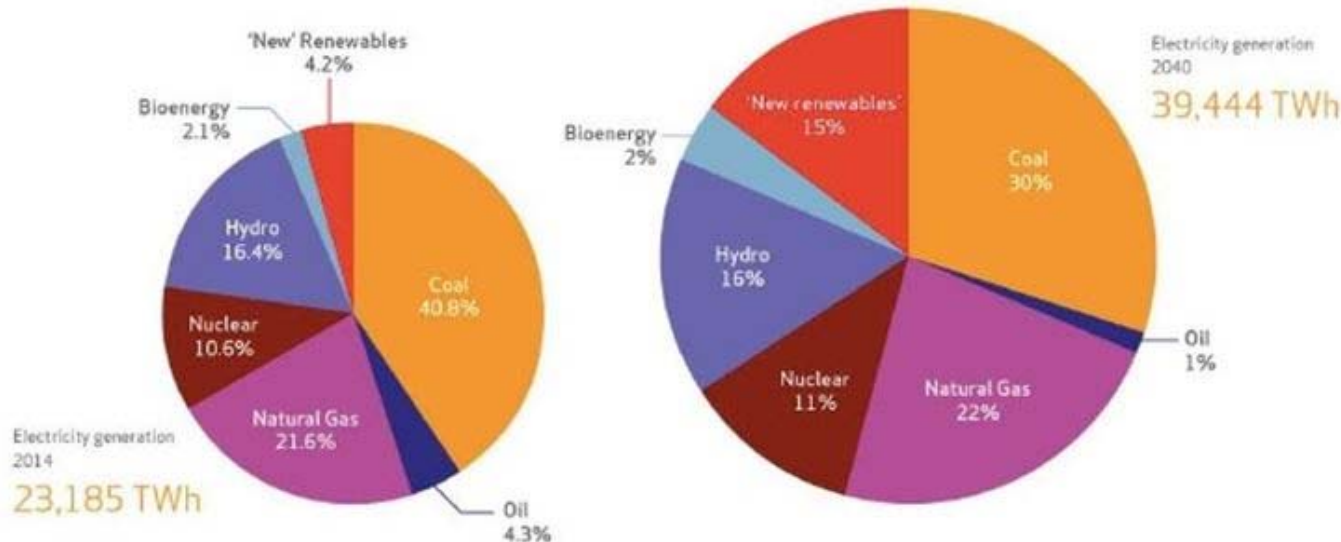


Myth #2: “Coal is Dead and President Trump Cannot Bring it Back.”

Truth:

1. Most announced retirements to date cite regulations, not market forces as cause.
2. Without CPP, coal industry would look the same in 2030-2040; with CPP, coal production would be about two-thirds current levels.

Global electricity mix



Coal-based Electric Generation:

2014:

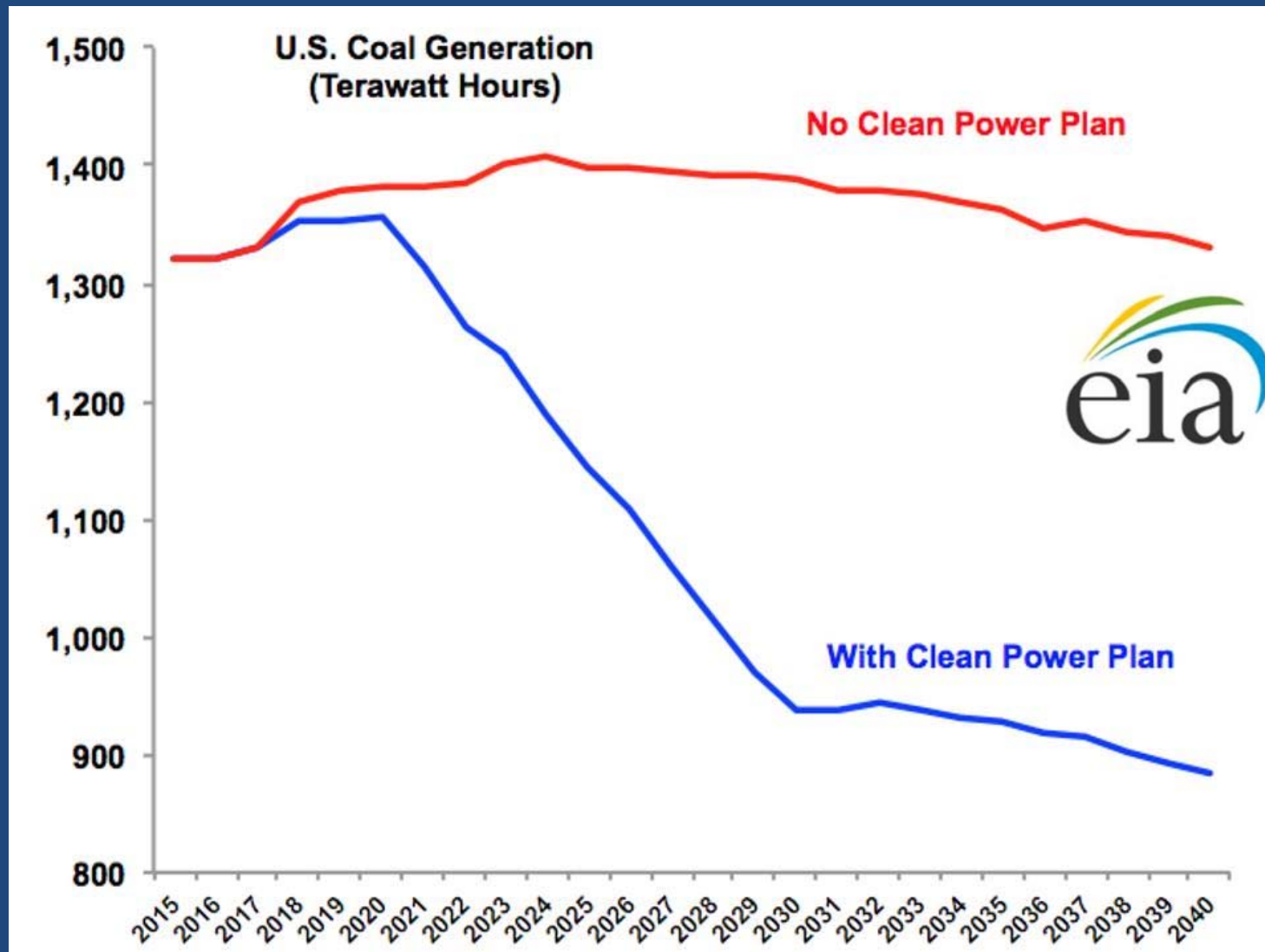
9,459 TWh

2040:

11.8332 TWh

Sources: Jude Clemente, Natural Gas Prices and Coal Under the Clean Power Plan, Forbes, Nov. 28, 2016, citing to EIA, AEO 2016, JTC; King Institute for Regional Economic Studies, King University, An Economic and Statistical Analysis of the “War on Coal,” July 2016.

CPP, not the Market, Was the Biggest Threat to Coal

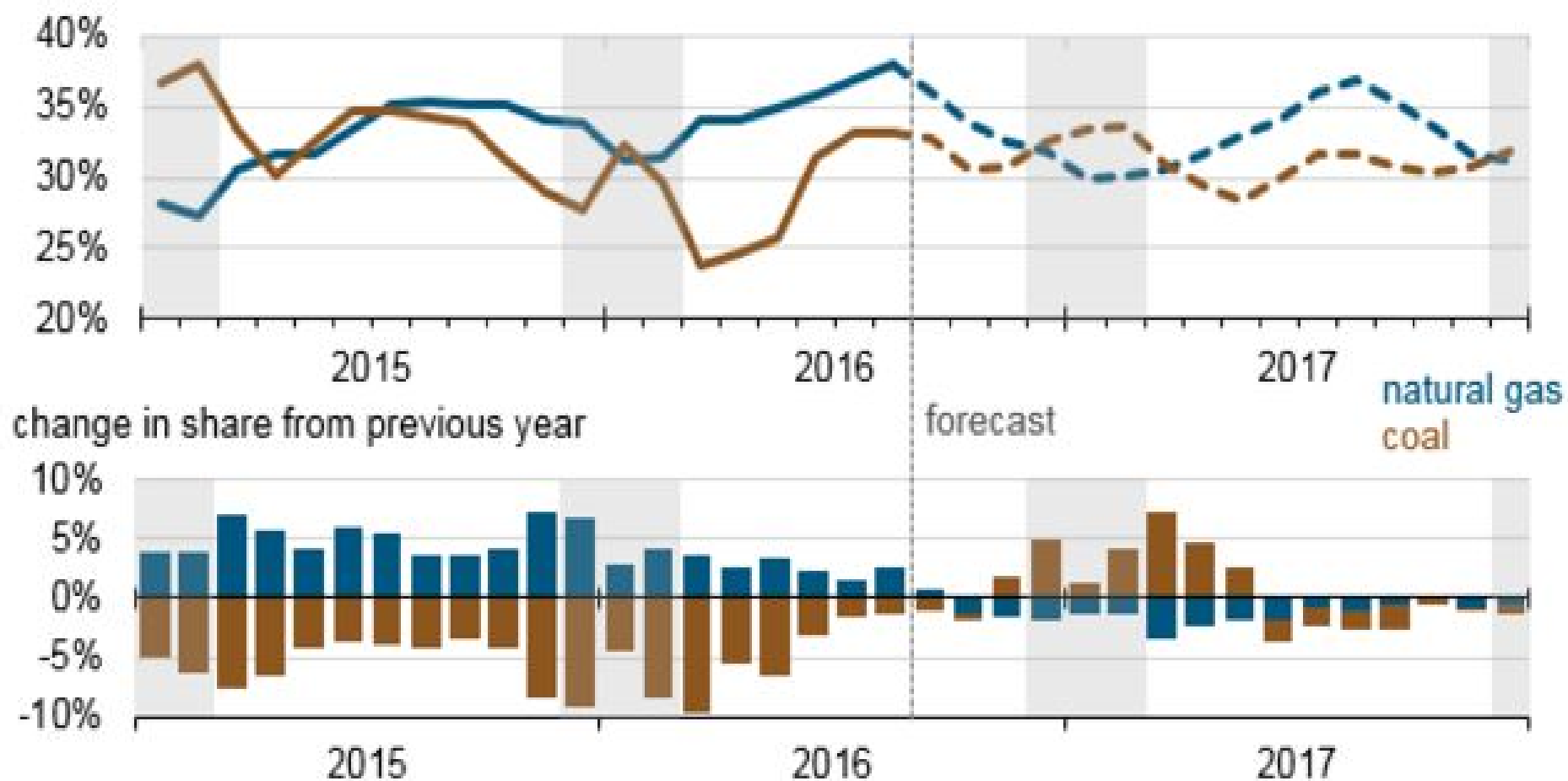




Coal's U.S. Market Share Recovers along w/NG Prices

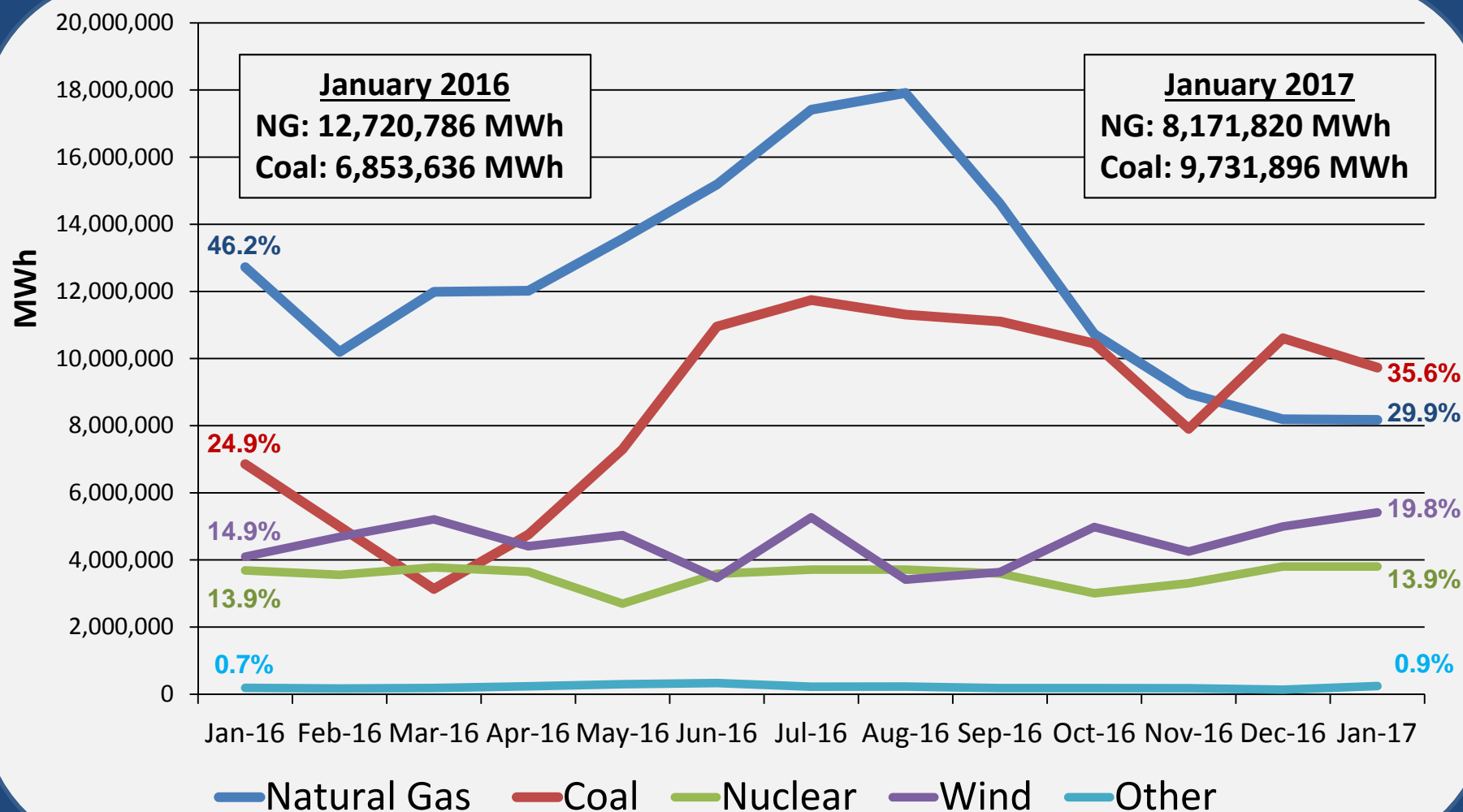


U.S. electricity generation fueled by coal and natural gas
share of total generation



Source: U.S. Energy Information Administration, *Short-Term Energy Outlook*, November 2016

ERCOT Case Study: TX Coal & Gas Generation Trending



Source: ERCOT, 2016 and 2017 Demand and Energy Reports. "Other" includes Solar, Water, and Other generation sources, but excludes Net DC/BLT; percentages are rounded.

World Energy Demand Ensures Coal's Future

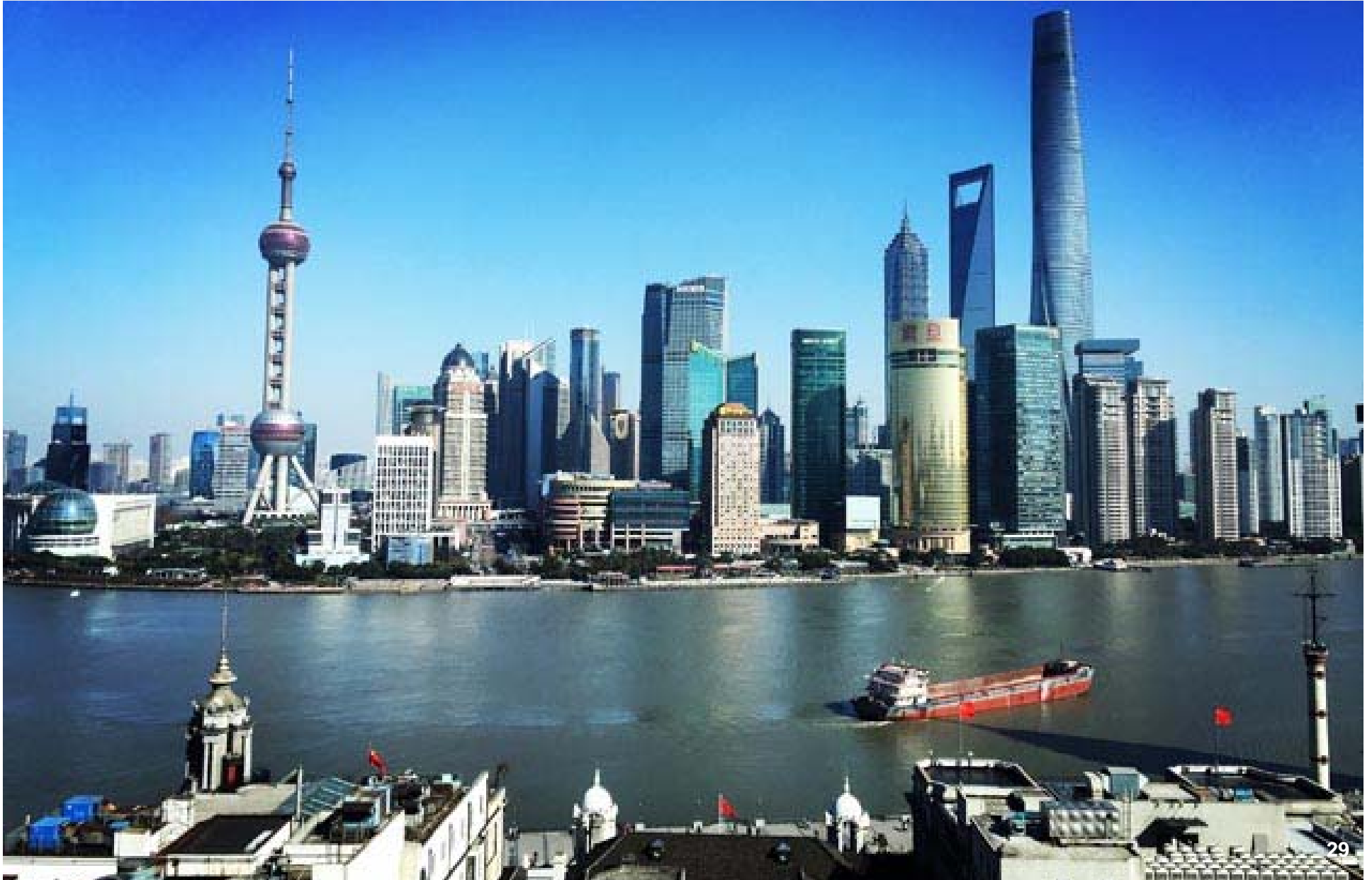
- Over Last 20 Years: 830 Million Get First Electricity
- Now: 1.3 Billion Still Living with no Access to Electricity



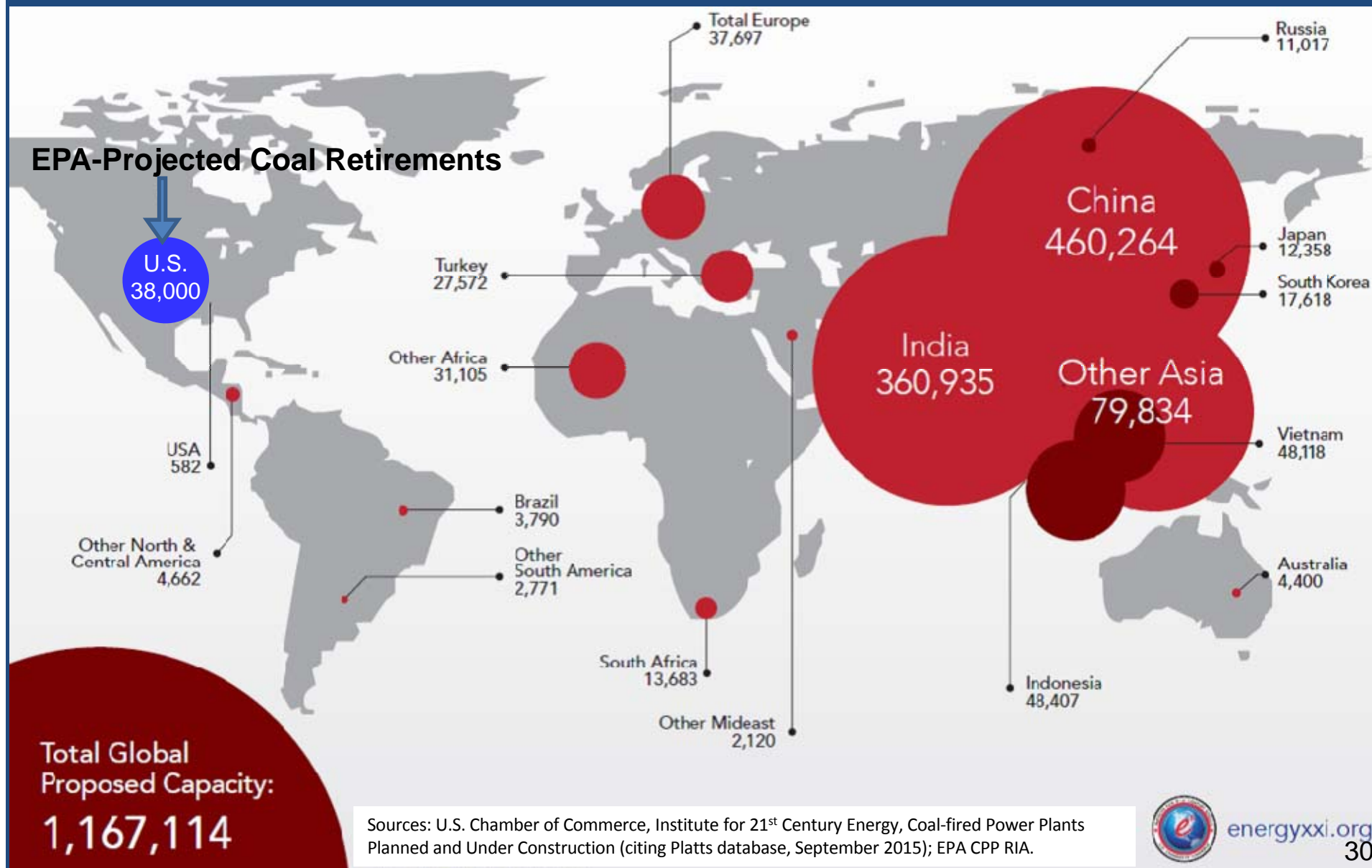
PUDONG (Shanghai) in 1990



PUDONG (Shanghai) Today



For every coal plant EPA predicted CPP would shut down: ...31 more are *already* planned or being built across the globe!



Myth #3: Renewable Energy is at “Grid Parity” with Coal and Natural Gas

Truth:

1. Renewables are NOT less expensive than existing fossil power plants.
2. Direct subsidy costs of renewables are hidden in income tax rates instead of showing up in consumers' electric rates (so far).
3. Indirect costs of renewables (transmission, ancillary services, and market distortions) are currently masked by low natural gas prices.
4. Renewables cannot yet cover peak (and will not without massive energy storage solution).

BOTTOM LINE:

**LET THE MARKET WORK!
THE FEDERAL GOVERNMENT
SHOULD NOT BE PART OF A
BUSINESS PLAN.**

Cost of Electricity Source: Institute for Energy Research, “The Levelized Cost of Electricity from Existing Generating Resources,” June 2015.

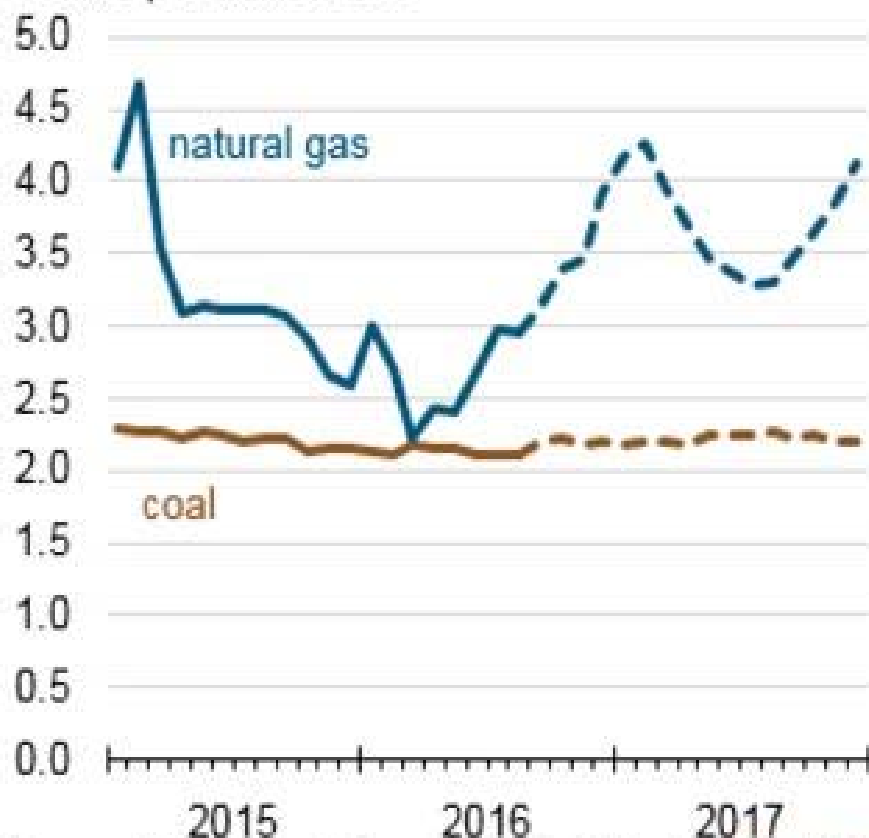




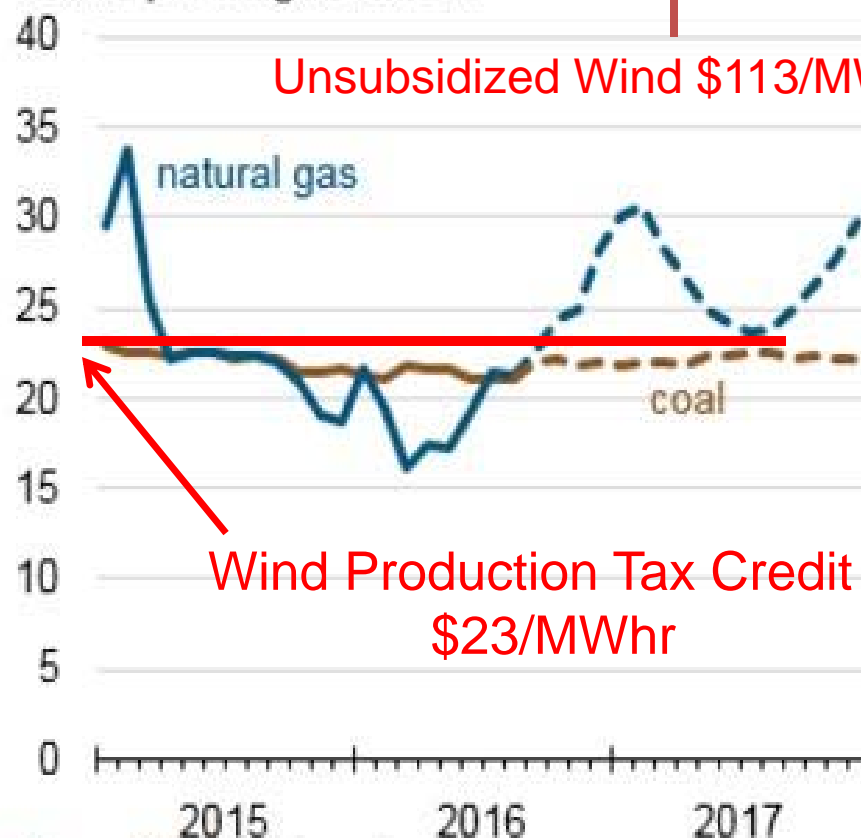
Tracking Power Prices



U.S. average cost of fuel for power generation
dollars per million Btu



dollars per megawatthour



Unsubsidized Wind \$113/MWhr

Wind Production Tax Credit =
\$23/MWhr

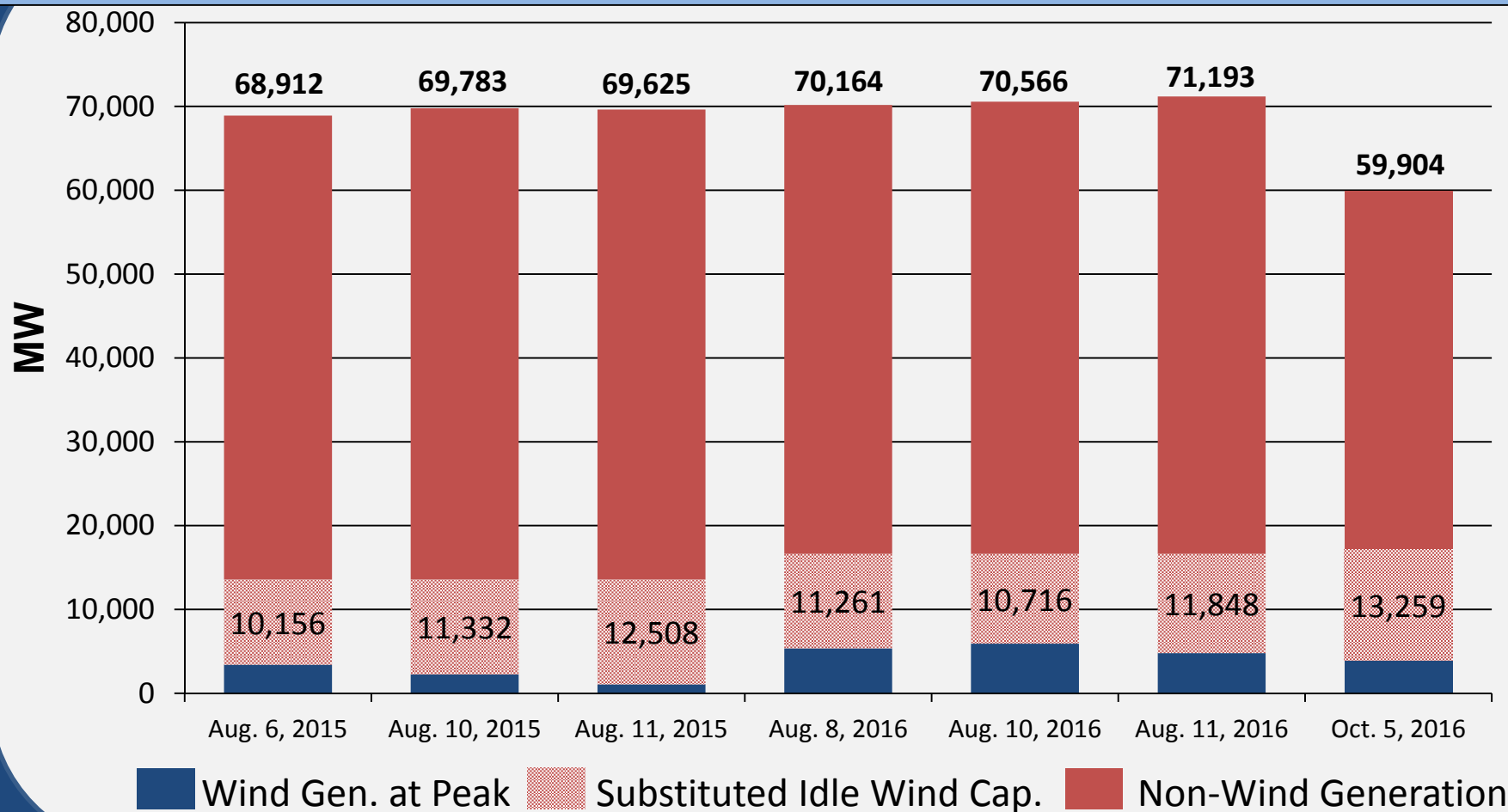
Source: U.S. Energy Information Administration, *Short-Term Energy Outlook*, November 2016

Note: Cost of fuel delivered to electricity generation (measured in \$/mmBtu) converted to \$/MWh using assumed heat rates of 10,000 Btu/kWh for coal and 7,200 Btu/kWh for natural gas.

Case Study: TX Fossil Plants Balance Grid

ERCOT Top Three Demand Days 2015 & 2016; Oct. 2016 Record Peak

Between August and October 2016, the share of monthly generation dropped for natural gas from 49.1% to 36.7%. (Coal went from 31% to 35.7% & wind from 9% to 17%)



Sources: ERCOT, Daily Wind Integration Reports; ERCOT Generation Interconnection Status Reports, August 2015, August 2016, and October 2016.



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QUESTIONS?

