

The Energy Council

June 6, 2025

Washington, DC

Jackson Walker LLP

Federal Energy Reboot & What States Can Do to Compliment the Effort

Mike Nasi

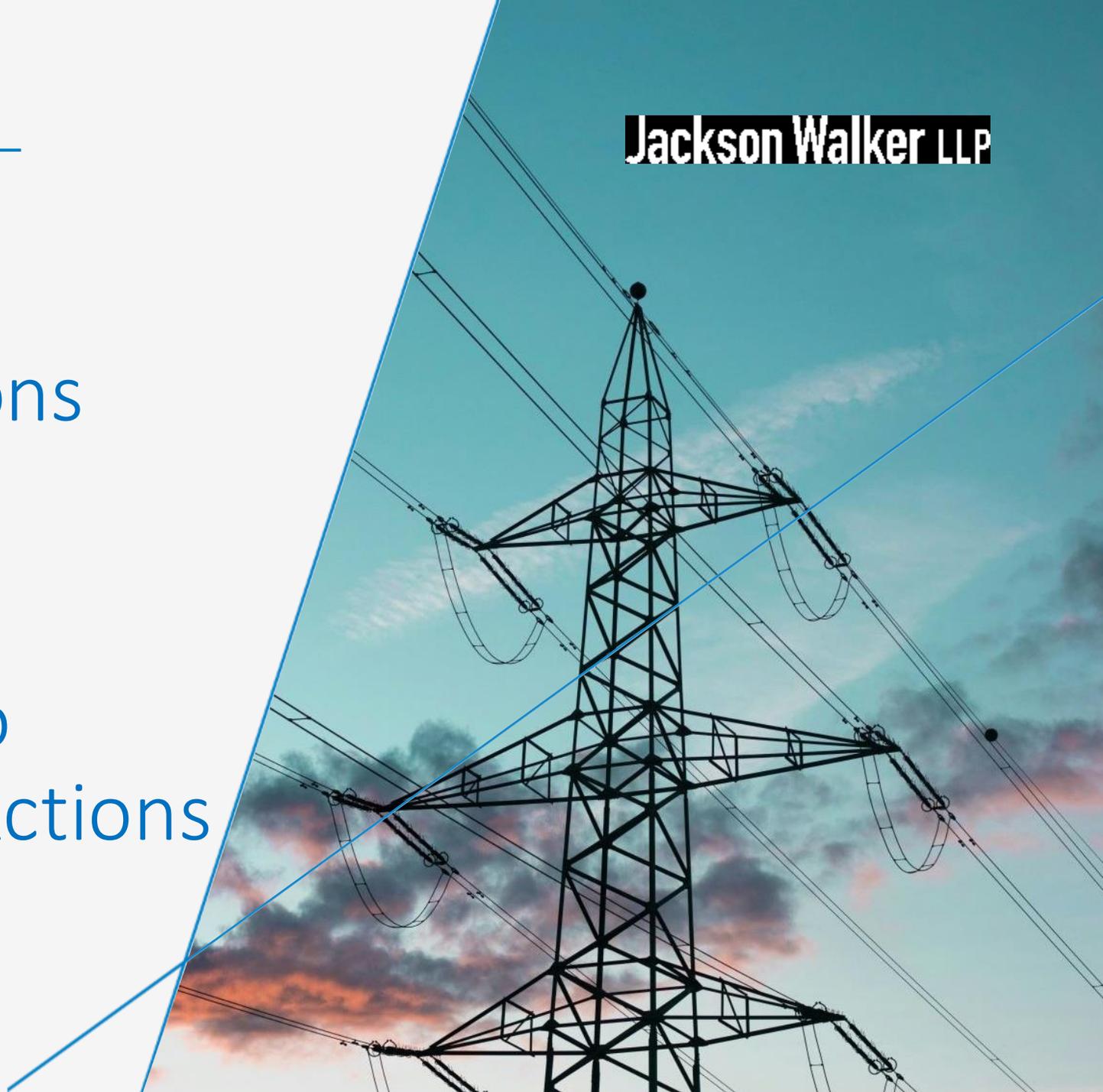
Partner, Jackson Walker LLP



Roadmap

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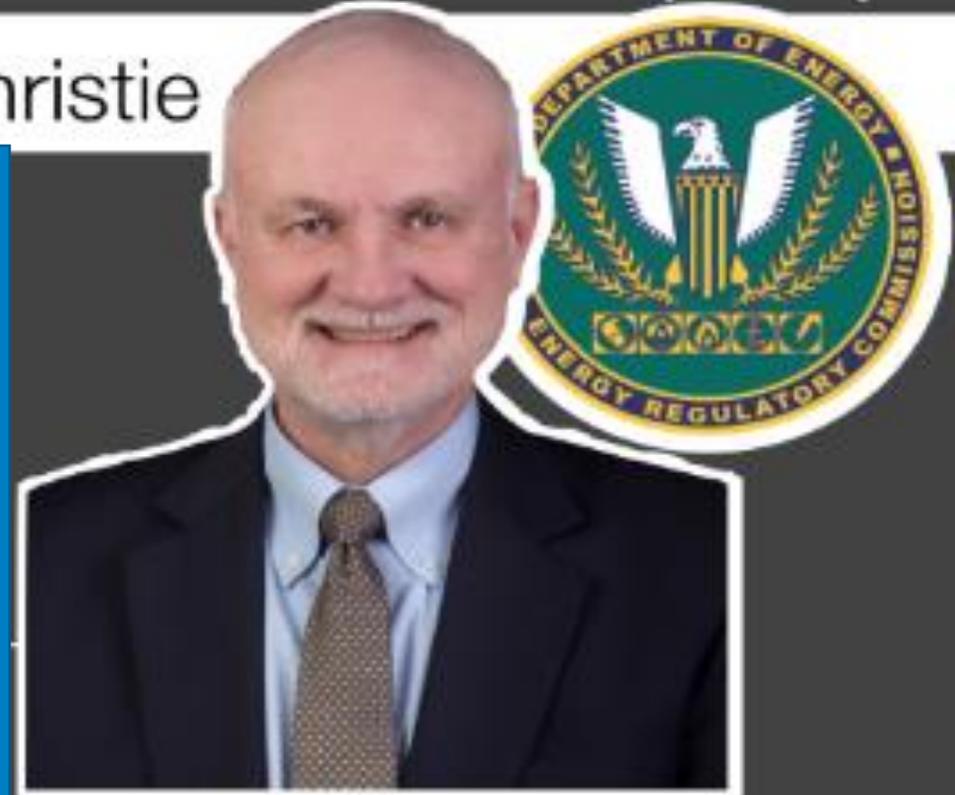
- State of the Grid
- Non-EPA Federal Actions
- EPA / GHG Update
- What States Can Do to Compliment Federal Actions



State of the Grid

FEDERAL ENERGY REGULATORY COMMISSION (FERC)

Commissioner Mark Christie



“Dispatchable generating resources [] with many years of useful life remaining, are retiring far too quickly and in quantities that threaten our ability to keep the lights on. So, the lights are flashing red and there is no excuse to ignore them.”

US House Committee on Energy & Commerce (July 24, 2024)

National Grid Reliability & Resilience Warnings

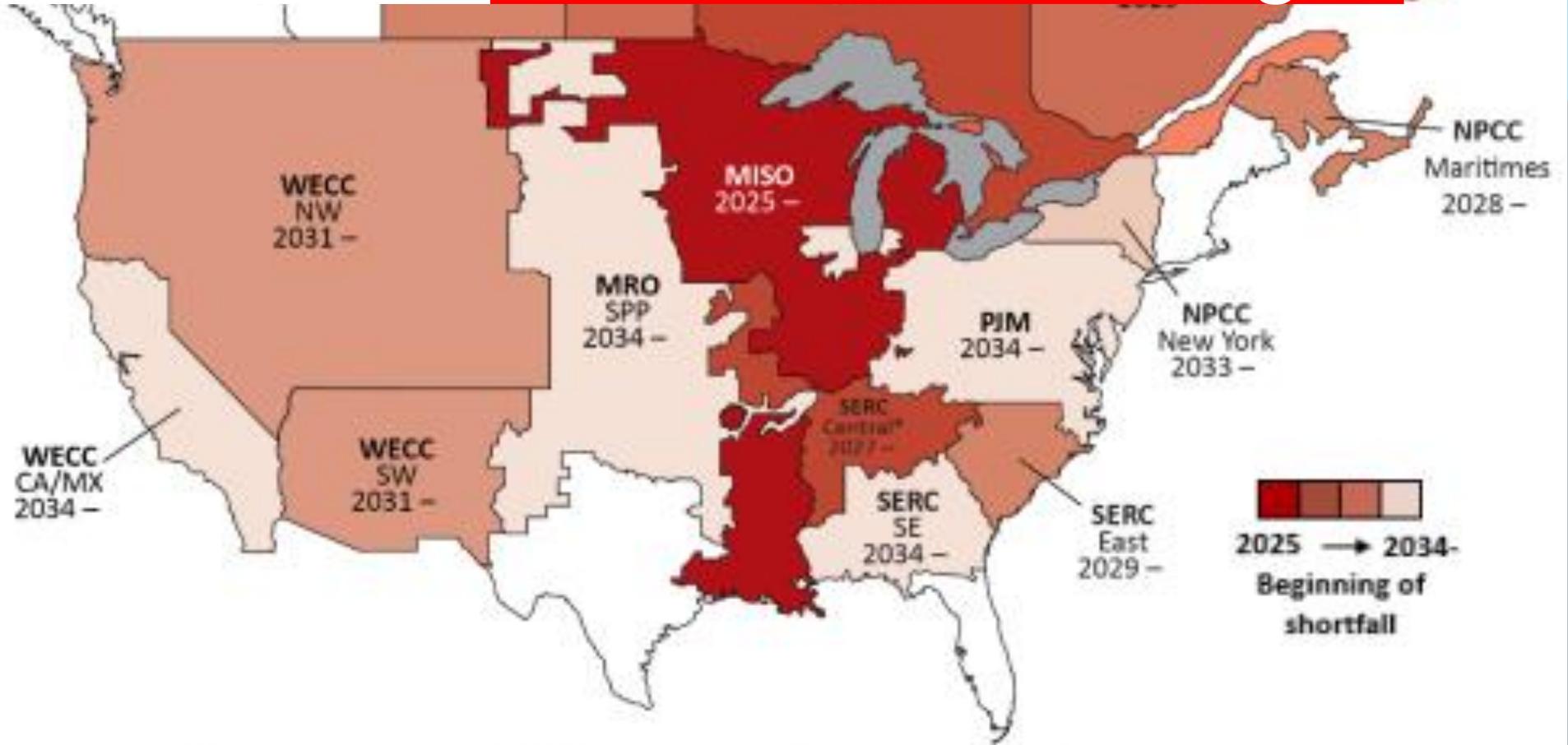


Figure 2: Projected Reserve Margin Shortfall Areas

May 2025



Figure 1: Summer Reliability Risk Area Summary

Seasonal Risk Assessment Summary

High

Potential for insufficient operating reserves in normal peak conditions

Elevated

Potential for insufficient operating reserves in above-normal conditions

Normal

Sufficient operating reserves expected

Decade

Average Annual Load Growth

1950s – New Appliances



1960s – Air Conditioning



1970s



1980s



1990s



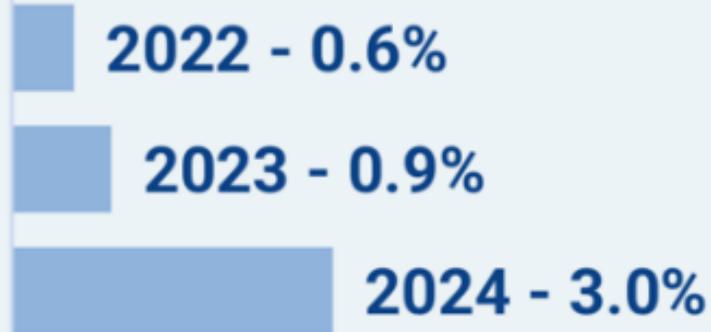
2000s – CFLs



2010s – LEDs



2020s – AI/Data...



Strategic Industries Surging: Driving US Power Demand

John D. Wilson, Zach Zimmerman, and Rob Gramlich

DECEMBER 2024

SOURCES | NERC, [2022 Long-Term Reliability Assessment](#) (December 2022), p. 20 and [Supplemental Table F](#).
Edison Electric Institute, [EEI Industry Capital Expenditures with Functional Detail](#), published October 2021, September 2022, September 2023 and September 2024.
Grid Strategies, [Fewer New Miles: The US Transmission Grid in the 2020s](#) (July 2024).

2024 Summer Peak Load Forecast

Between 2022-24:
Grid planners almost **tripled** 5-year load forecast (from 23 to 67GW)
(& doubled that number in the last 6 months)



5-year Nationwide Growth Forecast

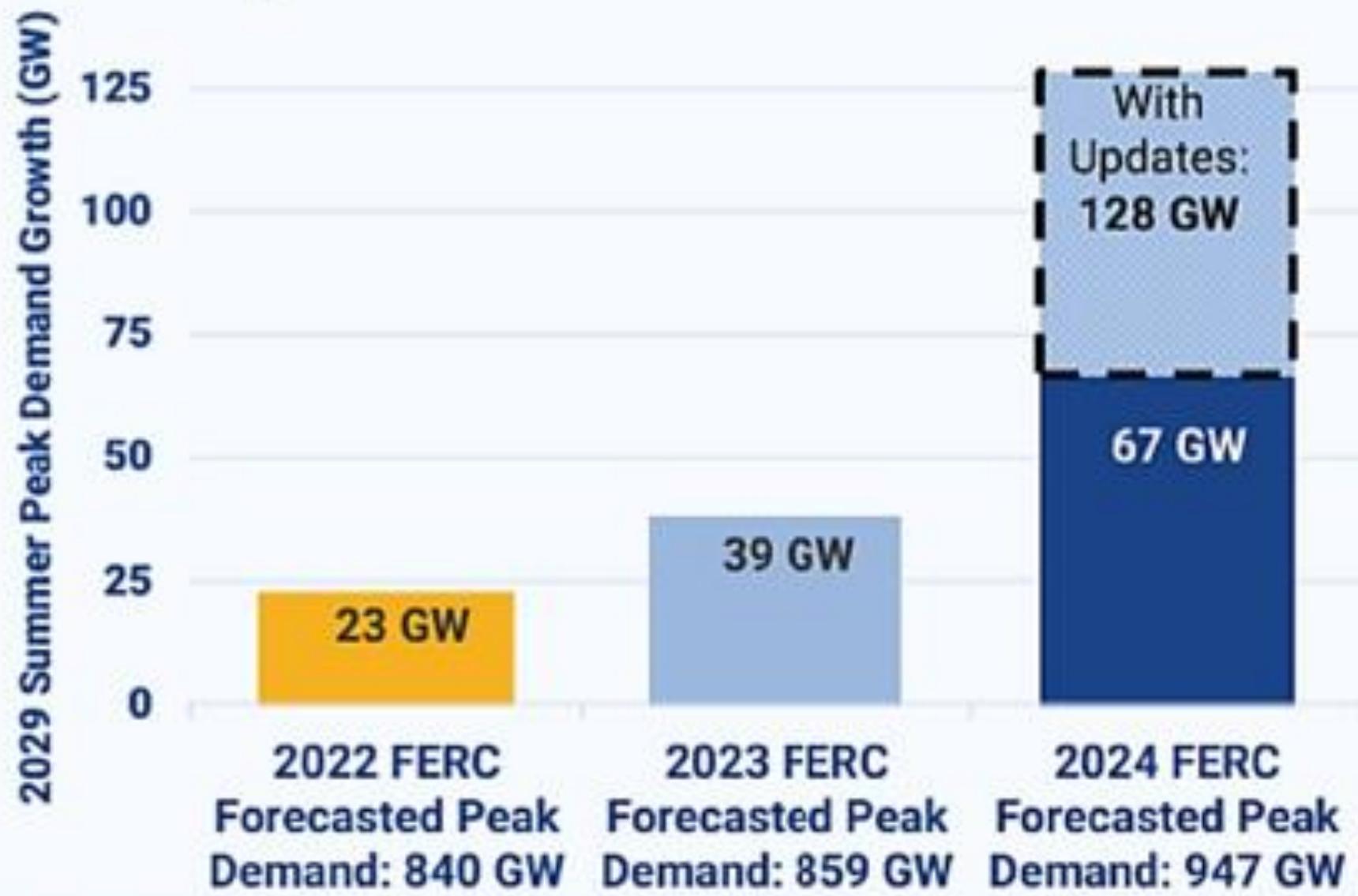


Figure 5: Forecasted summer peak demand growth from 2024 to 2029

Federal Update (Non-EPA)



EO Declaring a National Energy Emergency :

- Declares that current energy supplies are inadequate to meet rising demand.
- Directs all agencies to “identify and exercise any lawful emergency authorities available to them, as well as all other lawful authorities they may possess” to expand energy production.
- Directs agencies to “expedite the completion of all authorized and appropriated infrastructure, energy, environmental, and natural resources projects” within their authority.
- Orders the Army Corps of engineers to utilize emergency permitting to expedite permitting and construction of energy supply projects.
- Orders the Secretary of the Interior to identify and utilize emergency authorizations to reduce the burden of the Endangered Species Act.
- Creates an interagency task force to conduct a national-security focused assessment of energy, electricity, and refining infrastructure to protect the homeland and conduct operations abroad, with a focus on the Northeast and West Coast.

Key Energy Policy & Regulatory Executive Orders

- **Unleashing American Energy:** Declares a policy of energy abundance and orders all agencies to review all agency actions to identify actions that impose an undue burden on energy development.
- **Establishing the National Energy Dominance Council:** Establishes the NEDC within the Executive Office of the President to direct interagency cooperation on policy to drive energy dominance. Chaired by Sec. Burgum and co-chaired by Sec. Wright.



Other Key Energy / Regulatory Executive Orders

- **Recission Executive Orders:** Several EOs that rescind Biden- and Obama-era Executive Orders, including a number on climate and environmental issues.
- **Putting America First in International Environmental Agreements:** Withdrawal from the Paris Climate Accords.
- **Establishing and Implementing the President’s “Department of Government Efficiency”:** Creates DOGE Teams within each agency focused on cost-cutting and efficiency measures.
- **Restoring Accountability to Policy-Influencing Positions within the Federal Workforce:** Requires that policy-influencing government employees “faithfully implement administration policies to the best of their ability.”
- **Return to In-Person Work:** Directs heads of all agencies to terminate remote work arrangements. **Ending Radical and Wasteful Government**
- **DEI Programs and Preferencing:** Eliminates, among other things, environmental justice programs and offices.



April 8, 2025 – “Coal (& Grid) Day” Executive Orders

1. Reinvigorating America’s Beautiful Clean Coal Industry
2. Regulatory Relief for Certain Sources (112 Waivers)
3. Protecting American Energy from State Overreach
4. Strengthening the Reliability of the U.S. Electric Grid



1. Reinvigorating America's Beautiful Clean Coal Industry



- **Designation of coal as a mineral.** Coal is designed as a “mineral” under EOs aimed at increasing American mineral production through the elimination of regulatory barriers.
- **Assessment of coal resources.** The Secretaries of the Interior, Agriculture, and Energy are directed to provide a consolidated report that identifies coal resources on federal lands, assesses impediments to mining such resources, and proposes policies to remove them
- **Lifting barriers to coal mining on federal lands.** The Secretaries of the Interior and Agriculture are directed to prioritize and expedite coal leasing, including expedited environmental reviews.
- **Support for coal as an energy source.** All relevant agencies directed to, w/in 60 days identify & revise/ rescind policies hostile to coal.
- **Promotion of coal exports.** Commerce to promote exports.
- **Expand categorical exclusions under NEPA.** All agencies so directed.
- **Metallurgical coal:** DOI/DOE may designate as critical mineral.
- **Support for AI data centers:** ID regions where coal/AI can partner.
- **Acceleration of coal technology:** critical minerals, products, etc...





2. Regulatory Relief for Certain Stationary Sources

- President Trump issued a proclamation that exempts several coal-fired power plants from the Biden Administration's Mercury Air Toxics Standards issued on May 7, 2024.
- This proclamation is issued under Section 112(i)(4) of the Clean Air Act, which provides that the President may exempt stationary sources from compliance with a standard issued under Section 112 if the President finds that it is in the national security interests to do so and that the required control technologies are not available.
- The proclamation finds that the technology to implement the MATS Rule is not available in a commercially viable form and that it is in the national security interests of the United States to provide this exemption. The exemption lasts a period of two years.
- The proclamation refers to Annex 1 that was published on April 14, 2025 and includes 48 Companies & hundreds of units.

<https://www.epa.gov/system/files/documents/2025-04/regulatory-relief-for-certain-stationary-annex-1.pdf>

3. Protecting American Energy from State Overreach



- **Identification of burdensome state laws.** The Attorney General, in consultation with other agencies, is directed to identify State and local laws and policies that burden domestic energy production, with a focus on climate change, ESG, and environmental justice policies.
- **Challenge to illegal State laws.** The Attorney General is directed to take all appropriate actions to challenge State and local laws and policies that are determined by the Attorney General to be illegal.
- **Report to the President.** The AG must submit a report within 60 days regarding actions taken under this order.

4. Strengthening the Reliability and Security of the U.S. Electric Grid

- **Use of emergency authorities.** The Secretary of Energy is directed to streamline the process for issuing orders under Section 202(c) of the Federal Power Act during grid emergencies. Grid emergencies are defined as “periods when the relevant grid operator forecasts a temporary interruption of electricity supply is necessary to prevent a complete grid failure.”
- **Uniform reserve margin methodology.** The Secretary of Energy is directed to develop a uniform methodology for analyzing reserve margins and to utilize this methodology to identify at-risk regions. This methodology and report must be published by the Department of Energy within 90 days.
- **Critical generation resources.** DOE directed to establish a protocol to identify generation resources within at-risk regions that are critical to system reliability. The Secretary is further directed to use all available laws, including Section 202(c) of the Federal Power Act, to retain critical generation resources. The Secretary is also directed to prevent critical generation resources in excess of 50 MW of nameplate capacity from leaving the bulk power system or converting to another fuel that would decrease the resource’s accredited capacity.





“FPA Fridays” – Recent Section 202(c) Orders

- **Background on FPA 202(c):** Allows DOE to order temporary emergency operation of power plants to address grid reliability risks, even if this may conflict with some environmental rules, but only for the duration & scope of the emergency (90 day terms).
- **5/16 - Puerto Rico** (providing funding to assist in alleviating emergency lack of capacity & infrastructure)
- **5/23 - Campbell Coal Plant** (MISO, Michigan):
 - Ordered to stay operational & be dispatched as needed from May 23 to August 21, 2025, due to Midwest supply shortfalls from plant retirements.
 - MISO/Consumers must minimize costs, comply with environmental rules as much as possible, report daily to DOE, & file necessary tariff changes for cost recovery.
- **5/30 - Eddystone Gas/Oil Plant - Units 3 & 4** (PJM, Pennsylvania):
 - Ordered to remain available and dispatched as needed from May 30 to August 28, 2025, due to PJM resource adequacy concerns.
 - PJM/Constellation must minimize costs, comply with environmental rules as much as possible, report daily to DOE, and file necessary tariff changes for cost recovery.

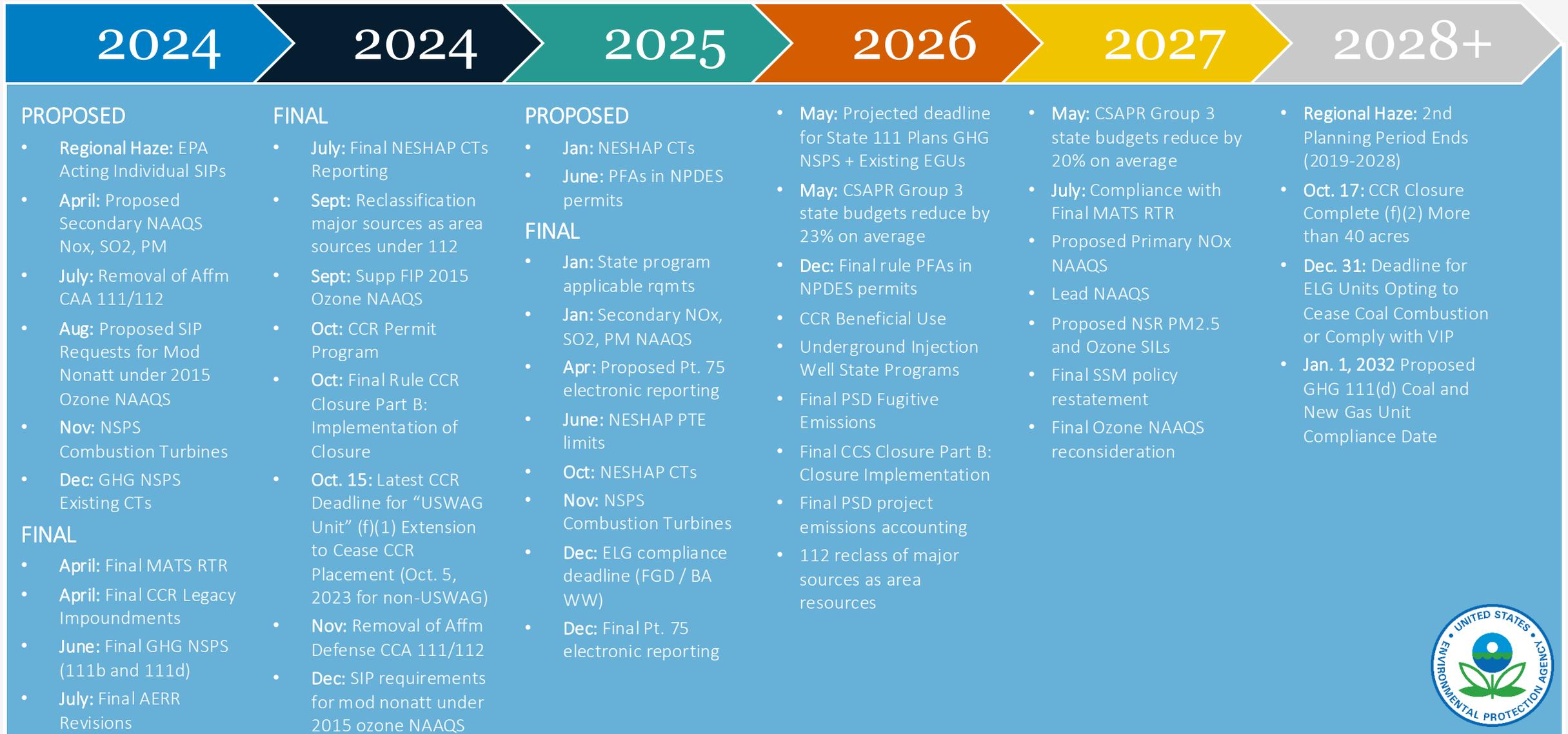
May 23, 2025 - “Nuclear Day” Executive Orders



- **Reinvigorating the Nuclear Industrial Base:** Directs rapid expansion of nuclear energy capacity using the Defense Procurement Act, provides funding & loan guarantees for restarting closed plants, uprating existing reactors, completing unfinished projects, & constructing new advanced reactors, securing domestic fuel supply chains, & enable recycling & reprocessing of nuclear materials to achieve energy independence & national security.
- **Deploying Advanced Nuclear Reactor Technologies for National Security:** Directs accelerated development & deployment of advanced nuclear reactors at DOE & DOD installations, domestic fuel supply & recycling prioritized, & expands U.S. nuclear exports & international cooperation.
- **Reforming Nuclear Reactor Testing at the DOE:** DOE to expedite & streamline the testing & deployment of advanced nuclear reactors, including establishing clear guidelines for test reactors, launching a pilot program outside national labs, & reforming environmental reviews.
- **Ordering the Reform of the Nuclear Regulatory Commission:** Directs the NRC to overhaul its structure, culture, & regulations to speed up licensing, lower barriers for new & advanced reactors, modernize safety standards, & prioritize U.S. nuclear leadership & capacity expansion while maintaining safety.

EPA Actions to Implement EOs

Wave of grid-threatening regulations coming into new Administration



Imminent Plans for Reforming GHG Regulation Under the Clean Air Act

Roadmap of Expected EPA GHG Reforms



Step 1: Repeal of the Biden Methane Rules for oil & gas (DONE) and Clean Power Plan 2.0 for power plants (ONGOING).

Step 2: Propose finding that U.S. power plant GHG emissions do not “significantly contribute” to global climate change under CAA § 111(b)(1)(A) *(could be a part of Step 1)*.

Step 3: Reconsideration of 2009 Endangerment Finding under “cause or contribute” standard of § 202(a) relating to tailpipe emissions.



Regulatory Timeline for Repeal of Power Plant GHG Regulations

Timeline	CPP Repeal & ACE (Timing Equivalent)	Proposed Regulatory Timeline
Jan 2025	President Trump's Second Inauguration	
Apr 2025	Advance Notice <u>NPRM</u>	6 months
Jul 2025	6 months	Proposed Rules
Oct 2025	Proposal: Repeal CPP	6 months (<u>45 day comment period</u>)
Jan 2026	--- TARGET DATE ---	Final Rules
Apr 2026	9 months	18 months
Jul 2026	Proposal: ACE Rule	
Oct 2026	12 months	
Jan 2027		
Apr 2027	18 months	DC Cir Opinion
Jul 2027		Final: ACE Rule
Oct 2027		12 months <i>SCOTUS likely to grant cert for upcoming Term.</i>
Jan 2028		
Apr 2028		
Jul 2028	18 months	SCOTUS Opinion
Oct 2028		
Jan 2029		DC Cir. Opinion
Jan 2029		2029 Inauguration Day
Apr 2029		
Jul 2029		
Oct 2029		
Jan 2030		
Apr 2030		
Jul 2039	SCOTUS Opinion	

In order to secure SCOTUS opinion before end of the current Presidential term, rules need to be finalized no later than January, 2026

Materiality of U.S. Power Plant GHG Emissions in Global Context



Legal Background on the Difference Between “Endangerment” and “Contribution” Standards in the Clean Air Act

“Endangerment” under Clean Air Act § 202(a)(“Tailpipe Emissions”):

The Administrator [of EPA] 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.

Essential (& until recently, ignored) Clean Air Act Language in § 111(b)(1)(A)(NSPS):

“The Administrator [of EPA] shall include a category of sources [e.g., power plants] in such list [of sources regulated under the 111 NSPS] 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*)

Determining “Significant Contribution” under 111(b)(1)(A)

Scientific Facts

The greenhouse effect is a **GLOBAL** phenomenon with many natural & anthropogenic contributors.

The greenhouse effect is driven by the **concentration of GHGs** in the atmosphere with impact measured by projected temperature increase - not simply the emission of an otherwise unarmful gas (CO₂) in the abstract.

The measurement error and annual variation in the mean worldwide surface temperature is approximately ±0.1 °C ([Morice et al., 2021](#)). Therefore, the modeled temperature increase projected to result from a given category of sources must be ≥ ±0.1 °C to be considered credibly measurable, much less “significant.”

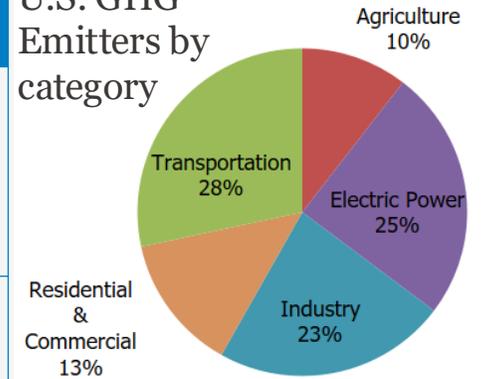
Legal Implications

“Being the biggest source category here” does **NOT** equate to “significance” to the global phenomenon feared to cause “endangerment.”

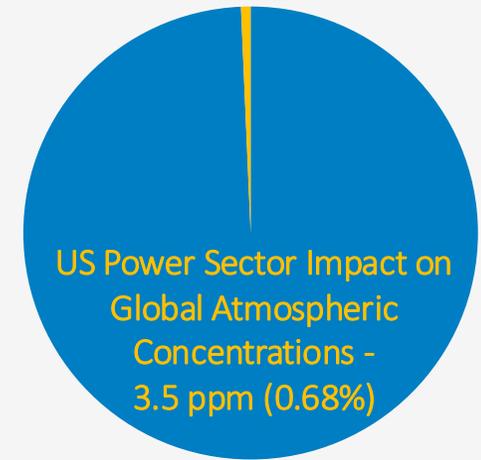
“Significance” should be assessed by assessing the impact of a source category’s annual mass emissions on global atmospheric GHG concentrations, **NOT** by comparing the relative **mass** emissions of U.S. power plants to other sources’ or nations’ **mass** of emissions.

U.S. power plants are not “significantly contributing” to feared endangerment from climate change because their combined impact to global **concentrations** is less than .68% & modeled resulting impact on worldwide **temperature** is 0.007 °C, which is **only 7% of the referenced measurement error band & annual temperature variation of ±0.1 °C.**

U.S. GHG Emitters by category

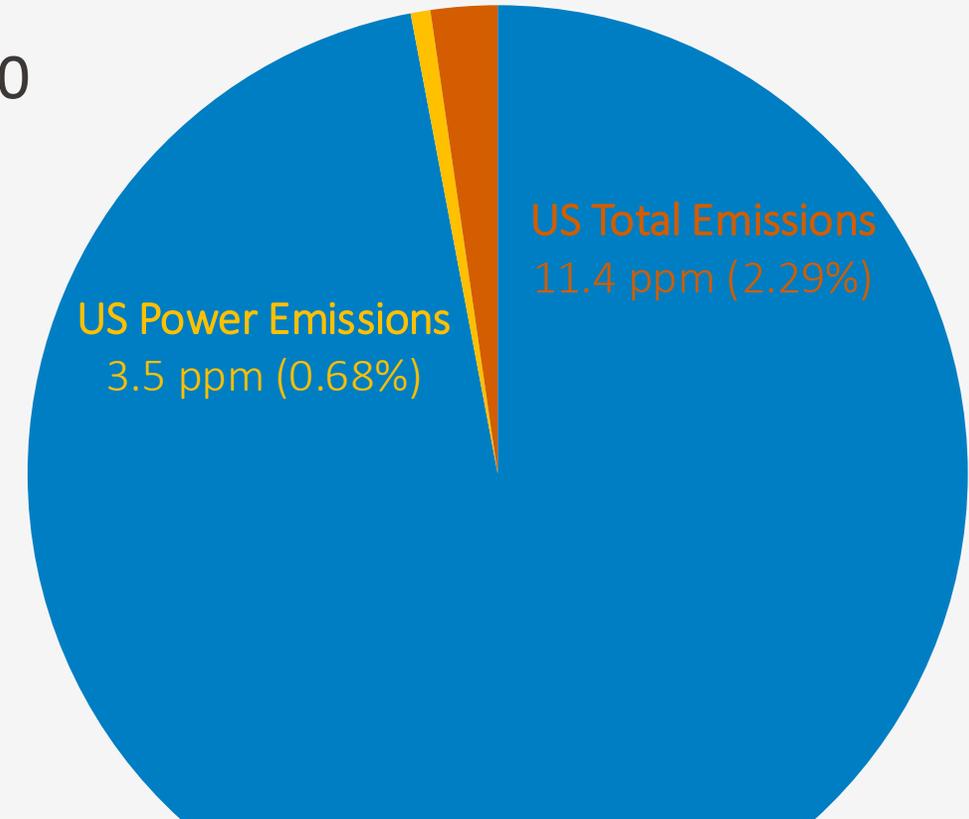


■ U.S. Power Sector
■ Global Emissions



Materiality of US GHG Emissions to “Endangerment” Under CAA

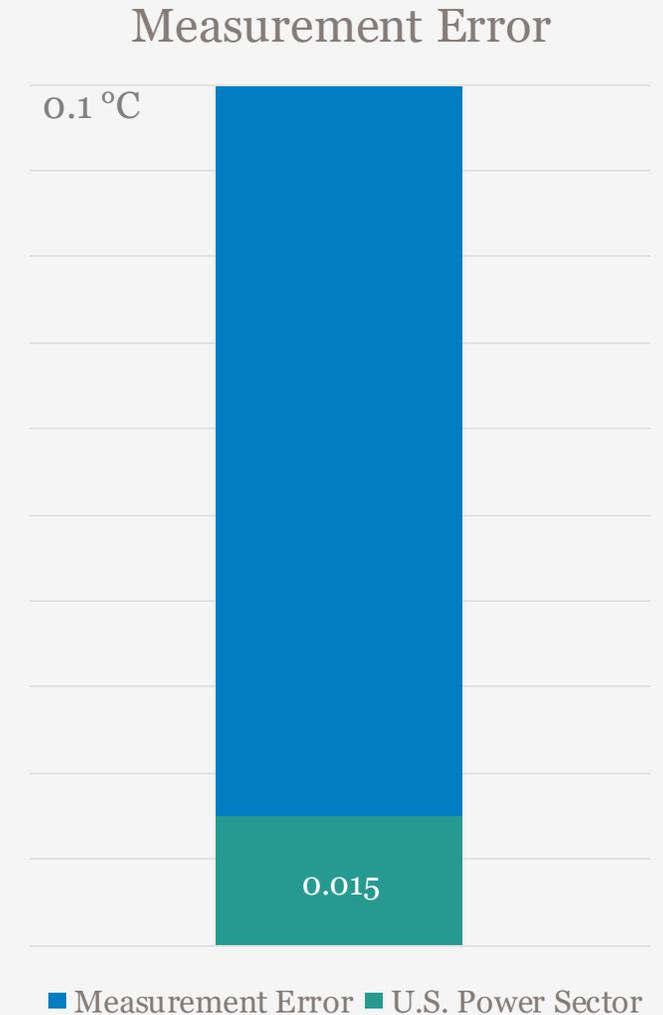
- 2050 impact of decarbonizing entire US economy by 2030
 - Reduction of 11.4 ppm (2.29%) in 2050
 - Reduction of global temps of 0.052 °C
- 2050 impact of decarbonizing US electric fleet by 2030
 - Reduction of 3.5 ppm (0.68%) in 2050
 - Reduction of global temps of 0.015 °C



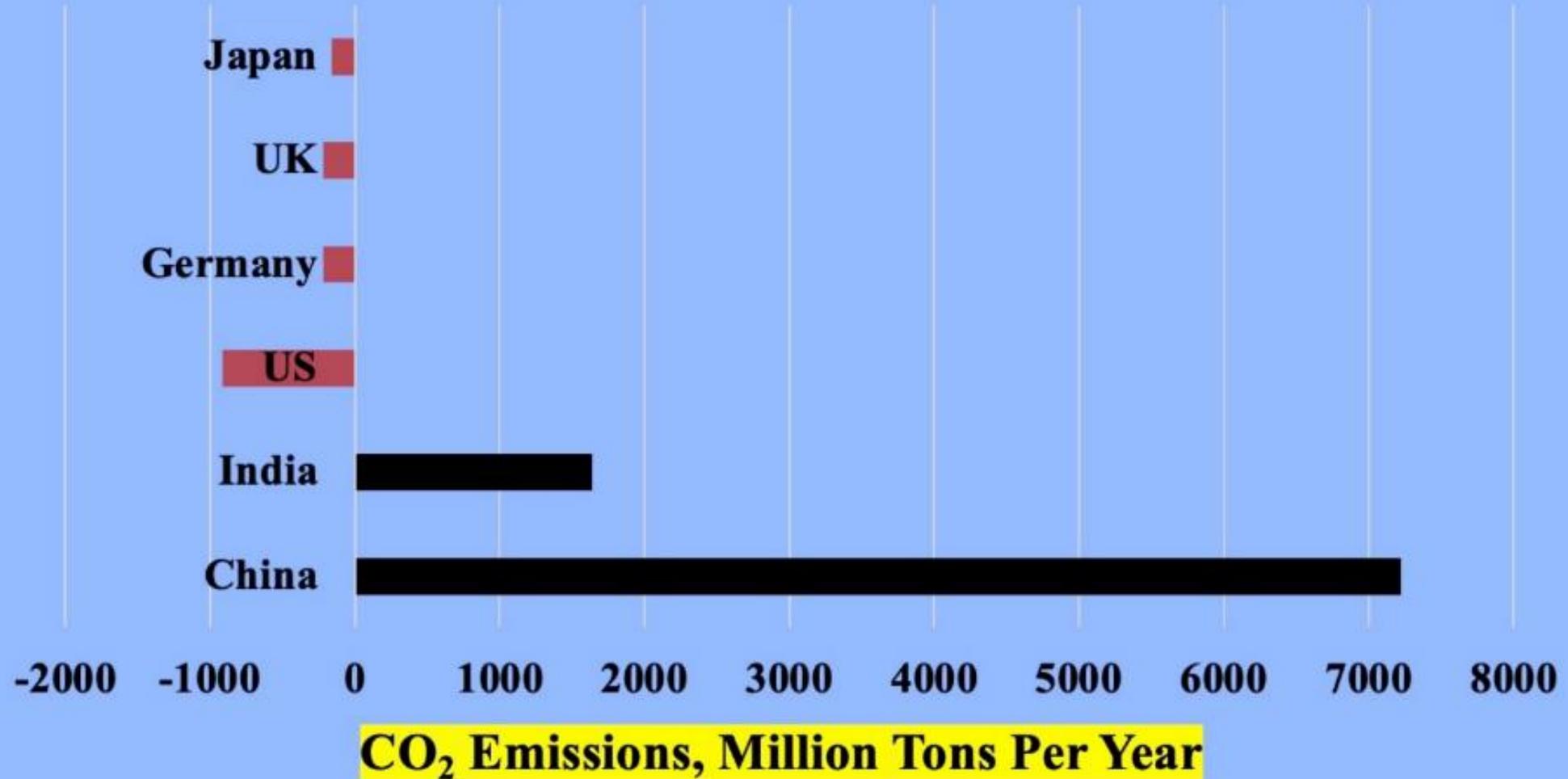
Net zero CO ₂ emissions by 2030	2050 CO ₂ (ppm)	2050 % Change	2050 Temp. Diff. (°C)	2040 % Change	2040 Temp. Diff. (°C)	2030 % Change	2030 Temp. Diff. (°C)
SSP2-4.5	498.8						
No U.S. Electricity	495.4	0.68%	0.015	0.45%	0.009	0.16%	0.002
No U.S. Emissions	487.4	2.29%	0.052	1.52%	0.030	0.55%	0.008

BOTTOM LINE: U.S. Power Sector Impact on Global Temperatures is NOT “Significant” Because it is Immeasurable Given Error Band

- The annual variation and measurement error in global surface temperature is approximately $\pm 0.1^{\circ}\text{C}$.
- The modeled temperature 2050 impact of eliminating U.S. power sector emissions (0.015°C) is well within this margin of error.
- Such a change is not measurable in the worldwide context.



Change in CO₂ emissions in the 6 largest economies over past 25 years



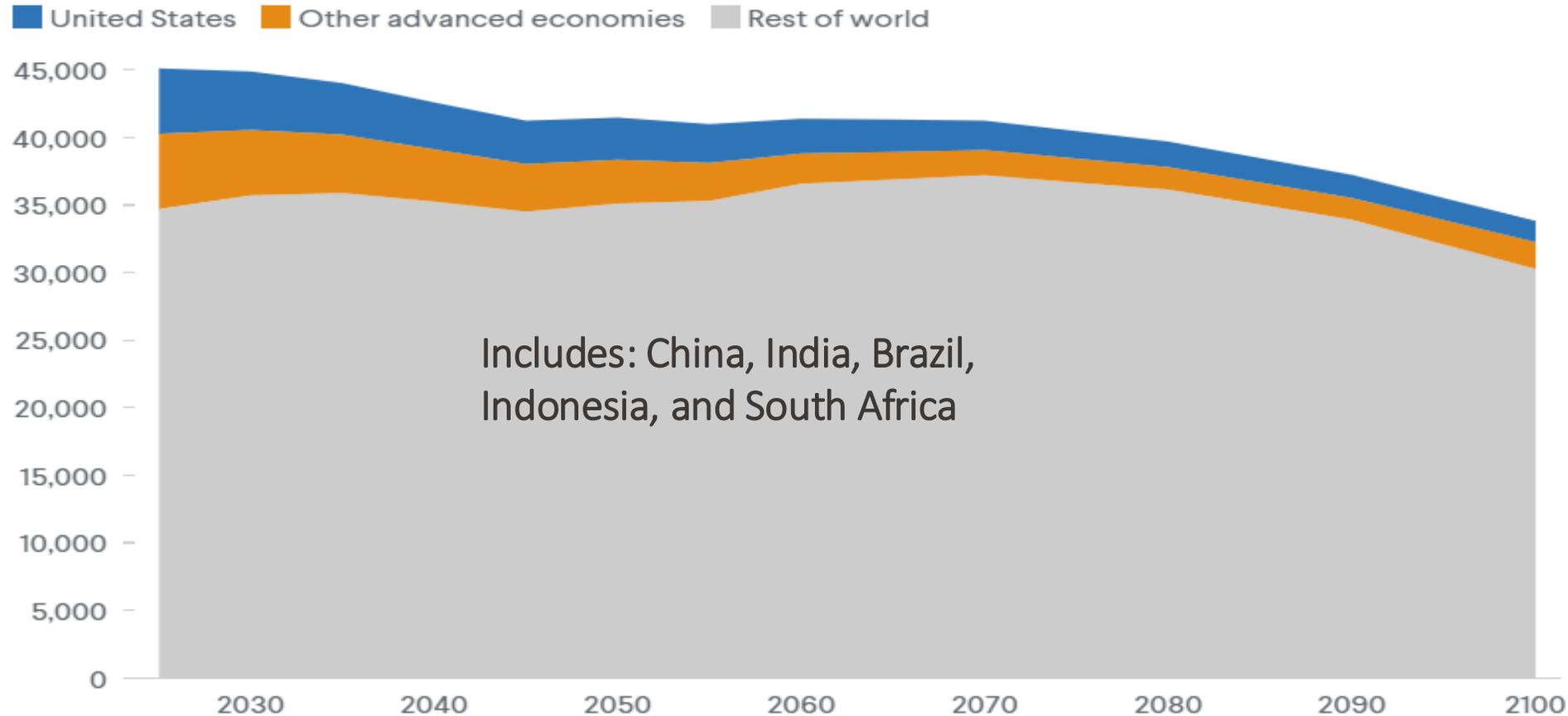
Source: Statistical Review of World Energy, 2023

© Robert Bryce

U.S. Emissions Shrinking Relative to Global Context Over Next 70 yrs

The Vast Majority of Future Emissions Will Come from China and Other Emerging Economies

Annual emissions with current policies (Mt of CO₂-equivalent)



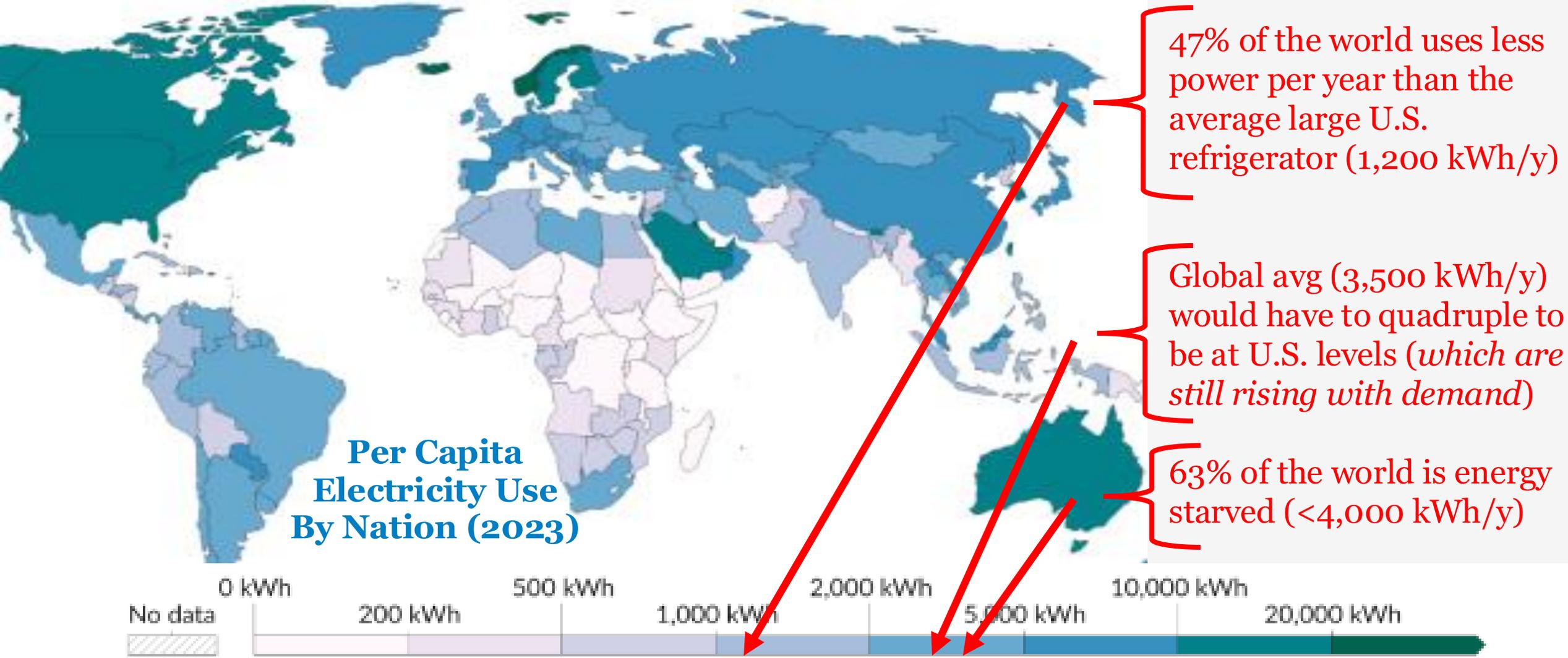
Source: NGFS Current Policies Scenario (2024, REMIND-MAgPIE 3.3-4.8 dataset).

COUNCIL on
FOREIGN
RELATIONS

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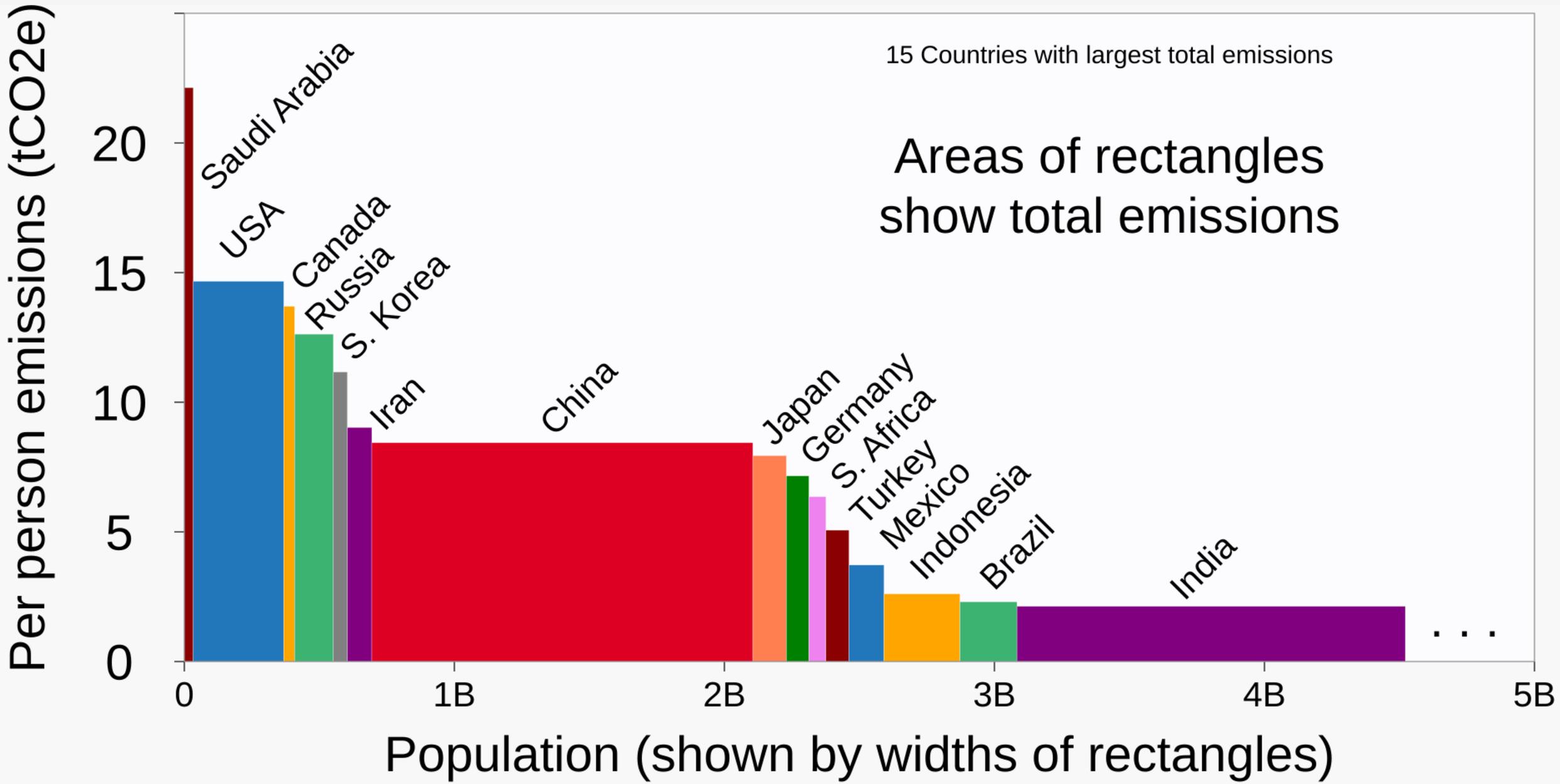
WHY IS THE US SUCH A SMALL PLAYER IN GHG EMISSIONS MOVING FORWARD?

The Energy Starved World is Busy Eradicating Energy Poverty



Data source: Ember (2024); Energy Institute - Statistical Review of World Energy (2024); Population based on various sources (2023)

The Answer is NOT a Carbon Import Tax due to Per Capita Emissions



SOURCES: Emissions data: "Territorial (MtCO₂) / 1) Emissions / Carbon emissions / Chart View". Global Carbon Atlas. 2024. (archive on Our World in Data); Country population: "Population, total / All Countries and Economies / Most Recent Value (Thousands)". World Bank. 2024.

Key Strategic Notes for Industries Favoring GHG Regulation under the Federal Clean Air Act as Protection from Lawsuits

- Federal common law nuisance claims, if ever recognized, are “displaced” by Congress’s passage of the Clean Air Act (and *Massachusetts v. EPA* decision that GHGs are “air pollutants”), but that does not mean that EPA concluding that CAA thresholds are not met (under Sections 111 or 202) somehow legitimize mass tort litigation.
- Protection from state claims under federal preemption doctrines is a separate issue and is not significantly impacted by EPA action one way or another - *factual significance of EPA’s technical findings is likely more important.*
- EPA’s back-and-forth on GHG regulations has created ten years of regulatory uncertainty and this cycle must be stopped with a more legally durable approach to whether and to what extent GHGs will be regulated under the Federal Clean Air Act.



Status of Key Non-GHG EPA Power Sector Rules

Rule	Current Status	Compliance Date
Mercury & Air Toxics Standards (MATS)	<p>Litigation in Abeyance. EPA to Reconsider: EPA announced reconsideration of the rule on Mar. 12, 2025. April 8 Presidential EO: Extends compliance date to 2029 for 48 entities & hundreds of units.</p>	<p>Future Rules if Future Administration Attempts to Reinstate Withdrawn Rules: Could be finalized between Q4 2029 and Q1 2031.</p>
Effluent Limitation Guidelines	<p>Litigation in Abeyance. EPA to Reconsider: EPA announced reconsideration of the underlying Regional Haze Rule on Mar. 12, 2025.</p>	<p>Future Rules if Future Administration Attempts to Reinstate Withdrawn Rules: Could be finalized between Q4 2029 and Q1 2031.</p>
Coal Combustion Residuals (CCR) Rule	<p>Litigation in Abeyance. EPA to Reconsider: EPA announced reconsideration of the underlying Regional Haze Rule on Mar. 12, 2025.</p>	<p>Future Rules if Future Administration Attempts to Reinstate Withdrawn Rules: Could be finalized between Q4 2029 and Q1 2031.</p>
Ozone Transport Rule (“Good Neighbor” Rule)	<p>Litigation Ongoing: Court denied motion for abeyance; EPA filed motion requested remand without vacatur on Mar. 10, 2025. Oral argument scheduled for Apr. 24, 2025. EPA to Reconsider: EPA announced reconsideration of the rule on Mar. 12, 2025 and plan to propose & finalize new rule by Fall 2026.</p>	<p>Future Rules if Future Administration Attempts to Reinstate Withdrawn Rules: Could be finalized between Q4 2029 and Q1 2031. This would take the form of a SIP call and imposition of FIP.</p>

What States Can Do to Complement Federal Reforms



Partnering with the Federal Government to Save the Grid & Grow



AS DOE RESTORES THE GRID



AS EPA RESTORES COOPERATIVE FEDERALISM

STATE PARALLEL ACTIONS:

-Participate in RTO proceedings relating to 202 orders & FERC oversight proceedings through PUC/PSC participation at RTOs (e.g., participate in committees (*see* ND HCR 3015).

-Consider legislation to address market distortions & prevent repeat bad actions that got us into this crisis.

- Prohibition of or pre-approval required for utility consent decrees involving retirement of coal-fired power plants (*see* OH SB 15; AR SB 463).
- Rebuttal Presumption that retirements cannot occur before equivalent replacement dispatchable & fuel resilient capacity in place (*see* KY SB 349; AR SB 596; MO SB 4).
- Intervention to take ownership of prematurely retiring assets to facilitate public-private partnerships to maintain capacity & co-locate digital infrastructure or other manufacturing (*see* UT HB 70).
- Improve economic valuation (& utility cost recovery for) dispatchability & fuel resilience (*see* WV HB 2014).
- Require firming of non-dispatchable resources to address imputed cost on the market currently paid by consumers (TX HB 1500 (almost expanded by SB 715)).

STATE PARALLEL ACTIONS:

-Comments & legal intervention in support of every key deregulatory action by EPA as they correct course from overreaching Biden EPA rules.

-Immediately seek EPA approval of existing programs eligible for delegation (e.g., CCR Rules, UIC Class VI Permitting).

-Expedite SIP revision & process to close gaps & integrate newly-reformed EPA implementation of key air programs.

-Expedite regional haze updates to purge past concessions and integrate newly-reformed EPA sound science policies.

-Coordinate with grid-related activities to ensure immediate suspension of retirement-forcing regulatory deadlines.

Questions

