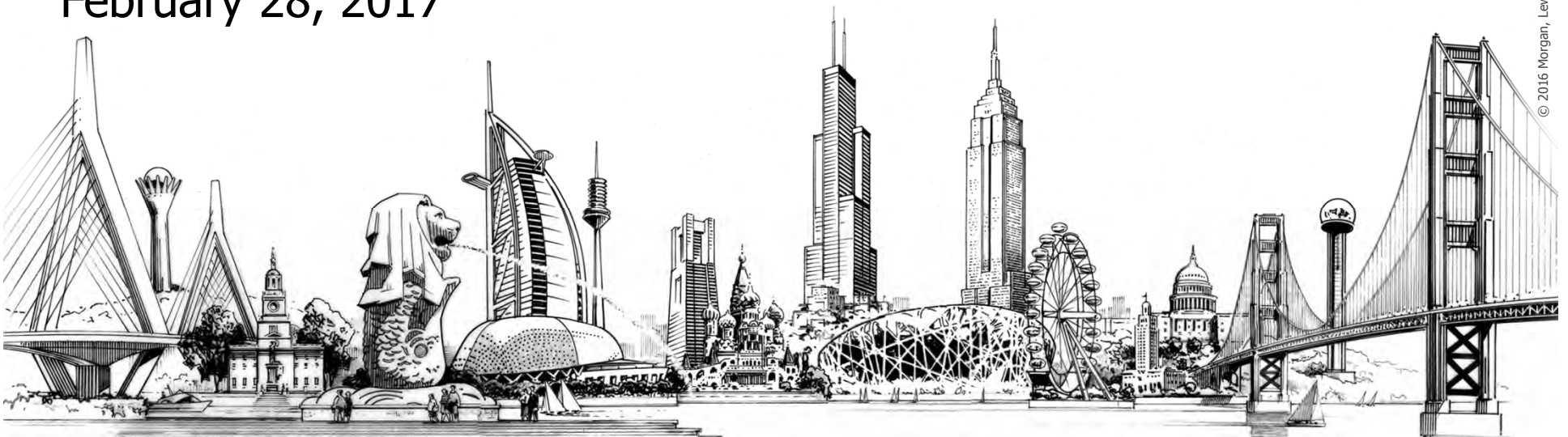


Morgan Lewis

2017 REGULATORY TRENDS: ***ELECTRIC ENERGY, OIL, AND NATURAL GAS***

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ENERGY ISSUES AND THE TRUMP ADMINISTRATION

Presidential Transition Act

- Each major candidate sets up a 501(c) organization in late summer.
- Moderate planning through November.
- Expansion post-election for the winner.

November 10 – January 20: Three Prongs

- Policy planning
 - Practices to change/budget/regulations/legislation
- Agency visits/information gathering (“landing teams”)
- Personnel – Cabinet, Senate-confirmed, other political (“Schedule Cs”)
 - “The Plum Book” sells out

January 20 – Early February

- Limited number of political appointees go in.
- Policy changes begin.

Early February - Forward

- Pace accelerates with multiple confirmations
 - Assistant Secretary and higher in Cabinet Agencies
 - Commissioners (e.g. FERC/SEC)
- Formal regulatory proposals

Actions so far – Regulatory Agenda

- Regulatory reform/reduction was a big campaign theme
 - Chief of Staff Freeze Directive – Common to All Administrations
 - Stops regulatory proposals that were “published” but not yet “effective”
 - Short term delay to review and assess
- Executive Order – 2 for 1 Memorandum
 - Eliminate 2 regulations for each new one
 - Sets a regulatory budget – no net increase in regulatory cost
- Executive Order -- Hiring Freeze and Plan to Shrink Through Attrition

Still to come?

- Regulatory changes through Notice and Comment Rulemaking?
- Congressional Review Act Nullifications
 - Disclosure Rule Related to Foreign Payments

ENERGY ISSUES AND ELECTION IMPACTS

The Presidential Race

- 270 electoral votes needed to win
 - Trump received 306
- By comparison:
 - Obama '12: 332
 - Obama '08: 365
 - Bush '04: 286
 - Bush '00: 271
 - Clinton '96: 379
 - Clinton '92: 370

Senate Elections

- 114th Congress (2015–2016)
 - Republicans: 54
 - Democrats: 46
- 115th Congress (2017–2018)
 - Republicans: 52
 - Democrats: 48

(Republicans cannot “lose” more than 2 votes.)

House of Representatives

- 114th Congress (2015–2016)
 - Republicans: 247
 - Democrats: 188
- 115th Congress (2017–2018)
 - Republicans: 241
 - Democrats: 194

(Republicans cannot “lose” more than 24 votes.)

Party Control of Administration and Congress

- Trump has a minimum of 2 years with a favorable House and Senate
- Obama in 8 years had only 2 years with a favorable House and Senate (6 years with a favorable Senate)
- Bush II in 8 years had 6 years with a favorable House and Senate
- Clinton in 8 years had only 2 years with a favorable House and Senate (and 6 with a very unfavorable House and Senate)

TRUMP ADMINISTRATION KEY APPOINTMENTS

DEPARTMENT OF ENERGY

Secretary – Rick Perry (Pending)

Administrator – Energy Information Administration

Assistant Secretary – Electricity Delivery and Energy Reliability

Assistant Secretary – Energy Efficiency and Renewable Energy

Assistant Secretary – Environmental Management

TRUMP ADMINISTRATION KEY APPOINTMENTS

DOE (continued)

Assistant Secretary – Fossil Energy

Assistant Secretary – Nuclear Energy

Assistant Secretary – International Affairs and Domestic Policy

Director – Advanced Research Projects Agency – Energy

Director – Office of Civilian Radioactive Waste Management

TRUMP ADMINISTRATION KEY APPOINTMENTS

DEPARTMENT OF INTERIOR

Secretary – Ryan Zinke (Pending)

Assistant Secretary – Land and Minerals Management

Assistant Secretary – Water and Science

Director – Bureau of Land Management

Director – Office of Surface Mining Reclamation and Enforcement

Director – U.S. Geological Survey

TRUMP ADMINISTRATION KEY APPOINTMENTS

ENVIRONMENTAL PROTECTION AGENCY

Administrator – Greg Pruitt (Confirmed)

Assistant Administrator – Air and Radiation

Assistant Administrator – Enforcement and Compliance Assurance

Assistant Administrator – Toxic Substances

Assistant Administrator – Solid Waste and Emergency Response

TRUMP ADMINISTRATION KEY APPOINTMENTS

FEDERAL ENERGY REGULATORY COMMISSION

Commissioners (5)

NUCLEAR REGULATORY COMMISSION

Commissioners (5)

KEY CONGRESSIONAL LEADERS ENERGY AND ENVIRONMENT

SENATE

- Mitch McConnell (KY) – Majority Leader
- Lisa Murkowski (AK) – Chairman, Energy and Natural Resources Committee
- John Barrasso (WY) – Chairman, Environment and Public Works Committee
- Orrin Hatch (UT) – Chairman, Finance Committee

KEY CONGRESSIONAL LEADERS

ENERGY AND ENVIRONMENT

- Charles Schumer (NY) – Minority Leader
- Maria Cantwell (WA) – Ranking Democrat, Energy and Natural Resources Committee
- Tom Carper (DE) – Ranking Democrat, Environment and Public Works Committee
- Ron Wyden (OR) – Ranking Democrat, Finance Committee

KEY CONGRESSIONAL LEADERS ENERGY AND ENVIRONMENT

HOUSE OF REPRESENTATIVES

- Paul Ryan (WI) - Speaker
- Kevin McCarthy (CA) – Majority Leader
- Greg Walden (OR) – Chairman, Energy and Commerce Committee
- Rob Bishop (UT) – Chairman, Natural Resources Committee
- Lamar Smith (TX) – Chairman, Science Committee
- Kevin Brady (TX) – Chairman, Ways and Means Committee

KEY CONGRESSIONAL LEADERS LABOR AND EMPLOYMENT

HOUSE OF REPRESENTATIVES

- Nancy Pelosi (CA) – Minority Leader
- Frank Pallone (NJ) – Ranking Democrat, Energy and Commerce Committee
- Raul Grijalva (AZ) – Ranking Democrat, Natural Resources Committee
- Eddie Bernice Johnson (TX) – Ranking Democrat, Science Committee
- Richard Neal (MA) – Ranking Democrat, Education and Workforce Committee

TRUMP – CONGRESS TOOLS FOR CHANGE

EXECUTIVE ORDERS

DELAY IMPLEMENTATION DATE

DECLINE TO APPEAL ADVERSE COURT DECISIONS

INITIATE NEW RULEMAKINGS

.....

NEW POLICY – NEW LAWS

WITHHOLD FUNDING

CONGRESSIONAL REVIEW ACT

CONGRESSIONAL REVIEW ACT (CRA)

The Small Business Regulatory Enforcement Fairness Act of 1996 – better known as the “Congressional Review Act” - established a mechanism by which Congress can review and disapprove federal agency rules.

Key Provisions

- House and Senate must pass a Joint Resolution and President must sign. Senate vote is simple majority (i.e., not subject to filibuster and 60 vote threshold)

CONGRESSIONAL REVIEW ACT

Key Provisions (continued)

- 60 day review period for Congress to consider action before effective date.
- “Major” rule is defined as a rule that will likely have annual effect on the economy of \$100 million or more, increase costs or prices for consumers, industries, or state and local governments, or have significant adverse effects on the economy.

CONGRESSIONAL REVIEW ACT

Key Provisions (continued)

- “Rule” is not limited to substantive rules, but embraces interpretive, organizational and procedural rules and encompasses “virtually every statement an agency may make.”
- A rule nullified under the CRA may not be reissued by the agency that is “substantially the same” as the disapproved rule.

CONGRESSIONAL REVIEW ACT

Since its enactment in 1996, the Congressional Review Act has only overturned one agency rule:

OSHA's ergonomics standard in March 2001

ENERGY POLICY - NUCLEAR

- Legislation
 - H.R.589 - Department of Energy Research and Innovation Act
 - H.R.431 - Nuclear Energy Innovation Capabilities Act of 2017
 - H.R. 456/S.95 - Nuclear Waste Informed Consent Act

ENERGY POLICY – OIL & GAS

- Legislation
 - H.J.Res.71 - Providing for congressional disapproval under chapter 8 of title 5, United States Code, of the final rule of the Office of Natural Resources Revenue of the Department of the Interior relating to consolidated Federal oil and gas and Federal and Indian coal valuation reform.
 - H.J.Res.56 - Providing for congressional disapproval under chapter 8 of title 5, United States Code, of the final rule of the Bureau of Land Management relating to "Onshore Oil and Gas Operations; Federal and Indian Oil and Gas Leases; Site Security".

ENERGY POLICY - RENEWABLES

- Hearings
 - House Science Committee Hearing on the DOE Loan Guarantee Program (2/15/17)

ENVIRONMENTAL POLICY

- Hearings
 - Senate EPW: Oversight: Modernization of the Endangered Species Act (2/15/17)
- Legislation
 - H.J.Res.38 - Disapproving the rule submitted by the Department of the Interior known as the Stream Protection Rule.
 - S.J.Res.21 - A joint resolution providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Environmental Protection Agency relating to Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS.

FERC TRENDS

Composition of FERC

- The priorities and initiatives in 2017 will depend, in large part, on the composition of the Commission itself.
 - FERC is an independent agency, which means that its policy directives are set through the interests of its Commissioners rather than any direction from the White House or Congress.
- January 26, 2017 – President Trump naming of Commissioner LaFleur as Acting Chairman sets off a chain reaction that results in the absence of a quorum at FERC.
 - FERC's ability to act without a quorum is severely impacted.
 - On the last day on which FERC had a quorum (February 3), FERC attempts to minimize the impact by delegating the authority to act in certain instances to its Staff.

Composition of FERC

- Preexisting delegated authority of FERC Staff
 - Actions taken pursuant to delegated authority are subject to rehearing
 - Extensions of time
 - Interventions
 - Rejections of out-of-time filings
 - Tolling rehearing orders
 - OALJ matters
 - Acceptance of uncontested tariff and rate schedule filings (power, gas, and oil sectors).
 - Acceptance of Section 203 and 204 filings, and interlocking director filings.

Composition of FERC

- Newly delegated authority of FERC Staff
 - Four areas
 - Involving rate and other filings
 - Involving extensions of time
 - Involving tariff, rate schedule and service agreement waivers
 - Involving settlements in litigated proceedings
 - Rate and other filings made pursuant to Section 4 of the Natural Gas Act, section 205 of the Federal Power Act, and section 6(3) of the Interstate Commerce Act may now be acted on by staff, and they may be **either**: (1) accepted, suspended, and made effective subject to refund *and subject to further order of the Commission*; **or** (2) accepted, suspended, and made effective subject to refund, *and set for hearing and settlement judge procedures*
 - Can now be accepted by staff pursuant to delegated authority **if** they are not contested by any party or participant
- What is not delegated to FERC Staff?
 - Contested pleadings
 - Enforcement matters

Attention to Organized Markets

- Market participants may reasonably expect FERC to focus attention on price formation issues within the organized markets.
 - Through revisions to organized market rules, including rules concerning forward capacity auction mechanisms, FERC can work to:
 - Ensure that markets return prices that sufficiently compensate generation and
 - Encourage investment in new resources necessary to serve load.
- FERC's focus in the organized markets is also expected to encompass demand response and storage resources.
 - The prior Commission at FERC supported the inclusion of demand response resources in organized market auctions, and that decision was affirmed by the Supreme Court (i.e. *EPSCA v. FERC*).
 - The prior Commission also publicly supported the integration of storage resources.

Infrastructure

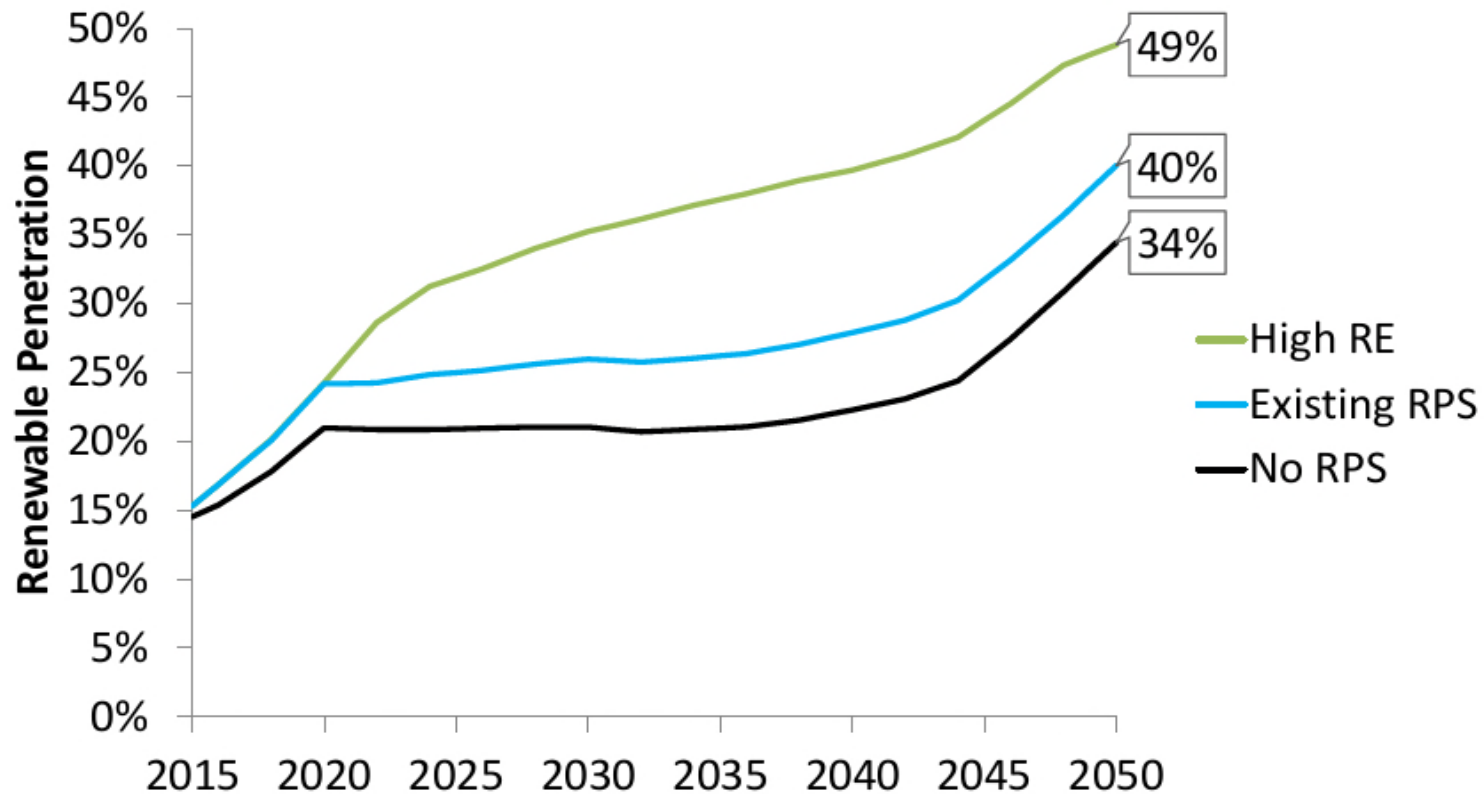
- The new composition of FERC is expected to emphasize timely review of interstate pipeline infrastructure projects.
 - Develop or implement ways to streamline the process in order to minimize the delays, increased costs, and uncertainty that currently exists due to increased opposition to the development of such projects.
 - An emphasis on efficiently reviewing pipeline infrastructure applications is consistent with:
 - President Trump's public statement supporting increased emphasis of natural gas; and
 - FERC's recognition over the past several years of the importance of natural gas to serve utility load as gas generation becomes more abundant.
 - However, infrastructure development is effectively stalled until FERC possesses a quorum of Commissioners that can approve pending project applications.

Enforcement

- FERC's Office of Enforcement is likely to continue its aggressive function in policing the markets in 2017.
- However, the type of behavior that forms the basis of a fraud or manipulation allegation may be impacted by the views of the new Commissioners that will join FERC.
 - Enforcement Staff is likely to continue its pursuit of fraud, false information, and physical-for-financial cases.
 - Gaming-related cases within the power markets could be impacted by a new Commission.
- FERC's view concerning the nature of a *de novo* review in FPA cases is also likely to change in order to reflect court rulings on the issue.

STATE REGULATORY TRENDS

Projected Growth in Renewable Energy To Meet Renewable Portfolio Standards



Source: Berkeley Lab

Continuing State Renewable Energy Requirements

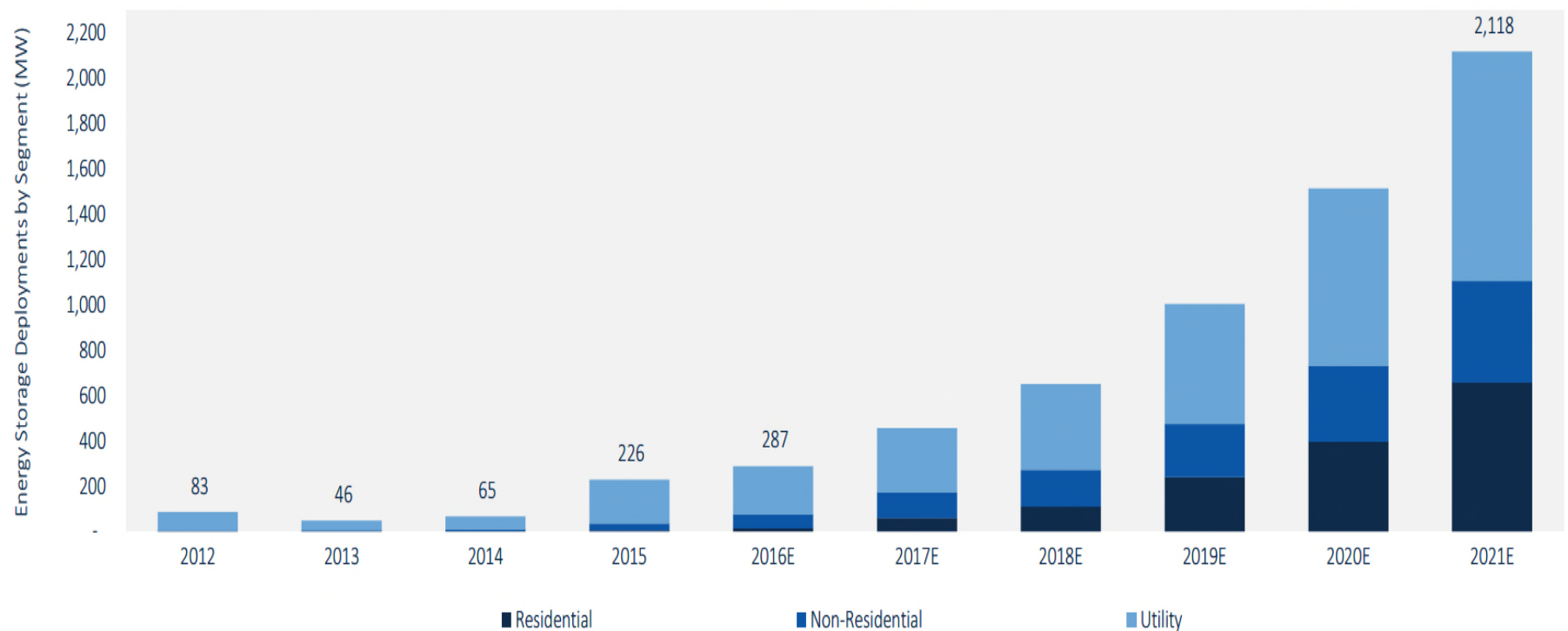
- Renewable Energy Portfolio Standards (RPSs) enacted in 29 states and District of Columbia
- Apply to 55% of total U.S. Retail Electricity Sales
- Total RPS demand could require **double** the capacity of non-hydro renewable energy by 2030; final targets still 5-10 years away
- **Issues:**
 - How will decreasing costs of renewable energy and reduced tax benefits interact with cost caps under many RPS programs?
 - What will be the effect of RPS revisions in some states?
 - Revisions include significant increases, including 50% in CA and NY by 2030
 - How will renewable energy increases be geographically distributed, and why?
 - *Source: Berkeley Lab (reports at rps.lbl.gov)*

Modernization of Distribution Systems and Valuing Distributed Energy Resources (DER)

- Continuing state legislative and regulatory initiatives are re-making utility business models and creating opportunities for customers, utilities, new companies and technologies
- Not theoretical – pilot programs, rulemakings, and implementation
- Basic concepts in play – “sale” of electricity, “public utility”
- Key areas: DER participation, interconnection rules, microgrids, decoupling/performance ratemaking, net metering, wholesale market interaction, electric vehicle integration
- States to watch: CA, NY, DC, CT, IL, MA
- **Issues:**
 - Clear understanding of federal/state jurisdictional lines
 - What attributes of DER are most important, and how much to pay for those?
 - Role of utilities in owning and operating DER

Growth in Energy Storage

U.S. Annual Energy Storage Deployment Forecast, 2012-2021E (MW)



Source: GTM Research

- GTM Research predicts 2.1 GW of storage deployed by 2021, nine times 2015
- For comparison: U.S. solar PV installed market now over 40 GW

Energy Storage Markets and Mandates

- FERC Rulemaking is key for opening up wholesale markets to storage but several states are not waiting to speed deployment
- California leading with 1325 MW by 2025 energy storage mandate; Massachusetts mandate due in July 2017
- Market remains small and segmented, with California and PJM frequency regulation market dominating in terms of installed MW, but increasing solar + storage and behind-the-meter deployments
- **Issues:**
 - Evolving understanding of actual storage performance, including economics of charging and efficiency
 - How will utility tariffs evolve to incorporate behind-the-meter storage?
 - What additional policies are appropriate for residential storage deployment?
 - How should policies address other emerging storage technologies?

Questions?



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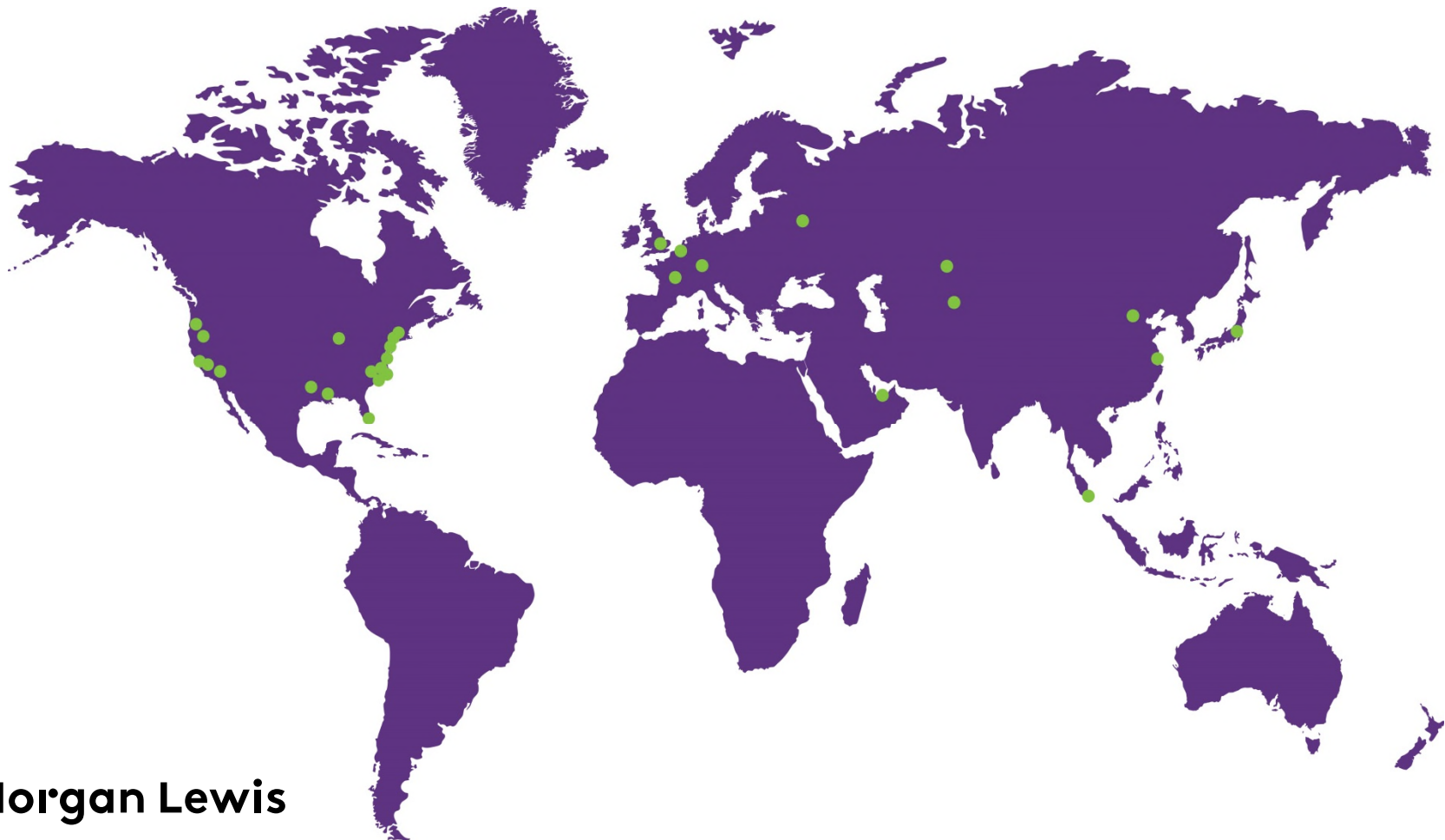


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