Expert Voices on Chin Energy
and Environ

Clearing the Air:
Is Natural Gas China’s Game Changer for Coal?

Insight Out is designed to tap on-the-ground expertise to understand the complex energy and environmental challenges facing China. As with much of our work, we cast an eye on opportunities for collaboration between American and Chinese researchers, business, NGOs, and governments.

Will Latta is the Founder and Managing Director of LP Amina. Mr. Latta has

Eric Redman is the Co-Chairman and former CEO of Summit Power Group, LLC. Summit is developing a variety of carbon capture power projects, including the Texas Clean Energy Project (TCEP), located in Penwll Texas, an Integrated Gasification Combined Cycle (IGCC) facility that will incorporate carbon capture, utilization and storage technology. TCEP will be a 400MW power/poly-gen project that will also produce urea for the U.S. fertilizer market and capture 90 percent of the carbon from its coal feedstock–approximately 2 million tons per year, which will be used for enhanced oil recovery in the West Texas Permian Basin. n July 2014, Summit kicked off a front-end engineering and design (FEED) study update with China Huanqui Contracting & Engineering Corporation, a subsidiary of China National Petroleum Corporation, Siemens, and others. TCEP received a $450MM award in 2010 from the U.S. Department of Energy's Clean Coal Power Initiative. Among other carbon capture projects, Summit is also developing a TCEP sister project, the Caledonia Clean Energy Project, in the United Kingdom with HQC and other Chinese participants.

Eric Wong is an energy and natural resources lawyer whose practice focuses on oil and gas, LNG, power and other energy transactions. Eric has represented international oil companies, regional national oil companies, investment banks, power companies and private equity firms in connection with various energy related matters including upstream oil and gas acquisitions and disposals, joint study and farm-in/farm-out arrangements, joint venture and shareholder agreements, acquisition financing transactions, construction of power.

River Yun Lu is founder and Managing Partner of River Partners, a boutique business development firm that facilitates U.S.-China business transactions and relationships in the fields of energy, environment, and healthcare. For five years, Ms. Lu served as China Director of Duke Energy, sourcing, establishing, and managing formal, multi-million dollar partnerships between the company and China's largest energy enterprises.

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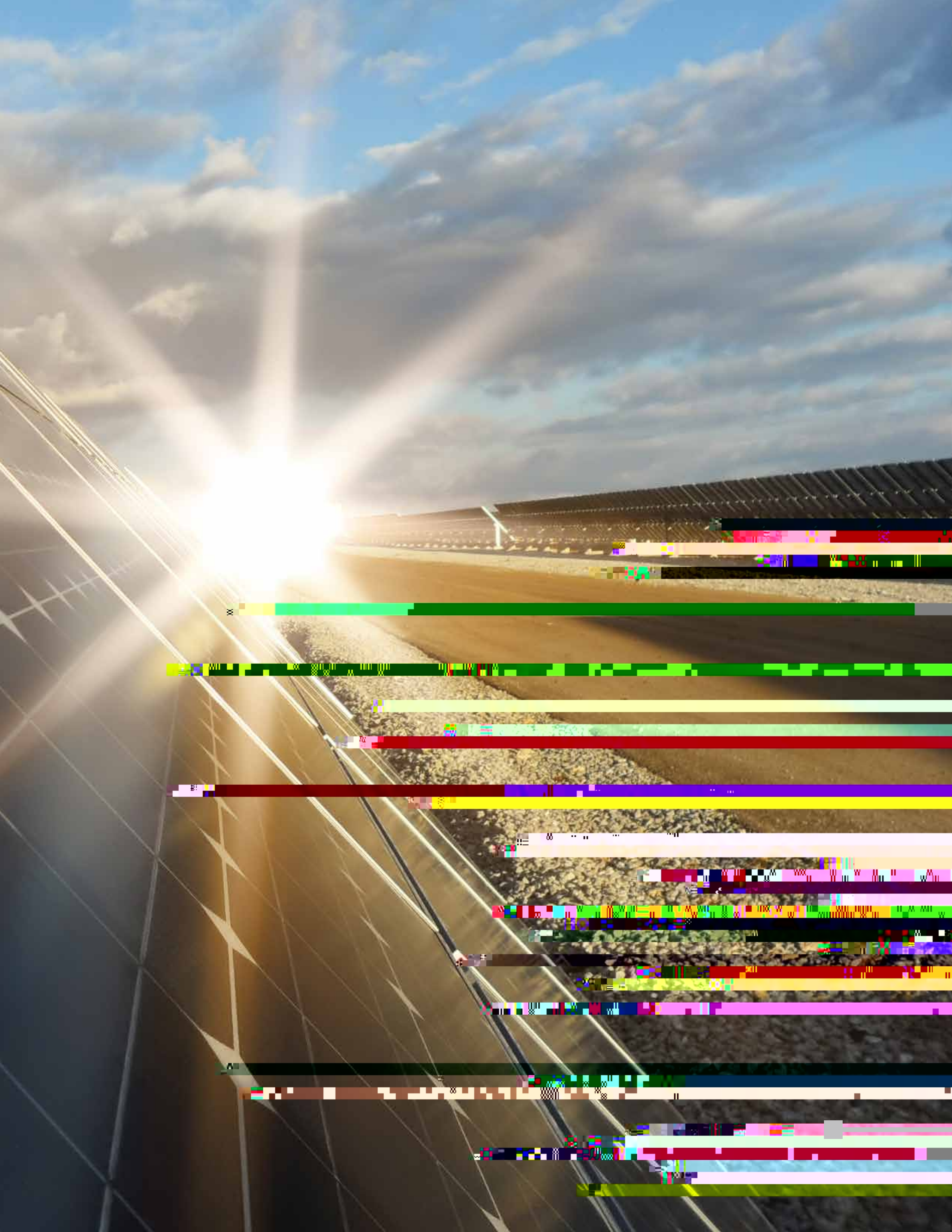
By Jennifer L. Turner and Melanie Hart

When foreign investors locate new energy projects in the United States, U.S. workers and consumers benefit. These investments, particularly in clean energy, help maintain and upgrade infrastructure, reduce carbon pollution, lower energy costs, and increase the nation's resilience to extreme weather events and global oil market shocks. While security issues must prevail in certain sectors of the energy economy (e.g., electricity infrastructure), bringing foreign investment into clean energy ultimately strengthens U.S. long-term competitiveness and can help close the infrastructure funding gap. Chinese investors, in particular, could play a critical role in spurring the U.S. energy economy.



In April 2015, Secretary of Commerce Penny Pritzker and Secretary of Energy Ernest Moniz led a business development mission to China to promote U.S. clean energy technologies and attract investors to the United States. Since 2009, clean energy has become one of the most promising areas of Sino-U.S. collaboration with the creation of the U.S.-China Clean Energy Research Center and regular bilateral forums on renewables, energy efficiency, and cleaner coal. These expanding forums on energy and climate laid the groundwork for the climate accord reached in late 2014, in which both countries committed to concrete reductions in fossil fuels. This growing collaboration should encourage investors and regulators in both countries to embrace the cooperative competitors' model in the clean energy sector for it offers mutual energy security and environmental benefits.

The Wilson Center's China Environment Forum (CEF) partnered with Center for American Progress to produce this *Insight Out* issue, which features voices from the business community to weigh in on the Chinese foreign direct investment challenge from four angles.

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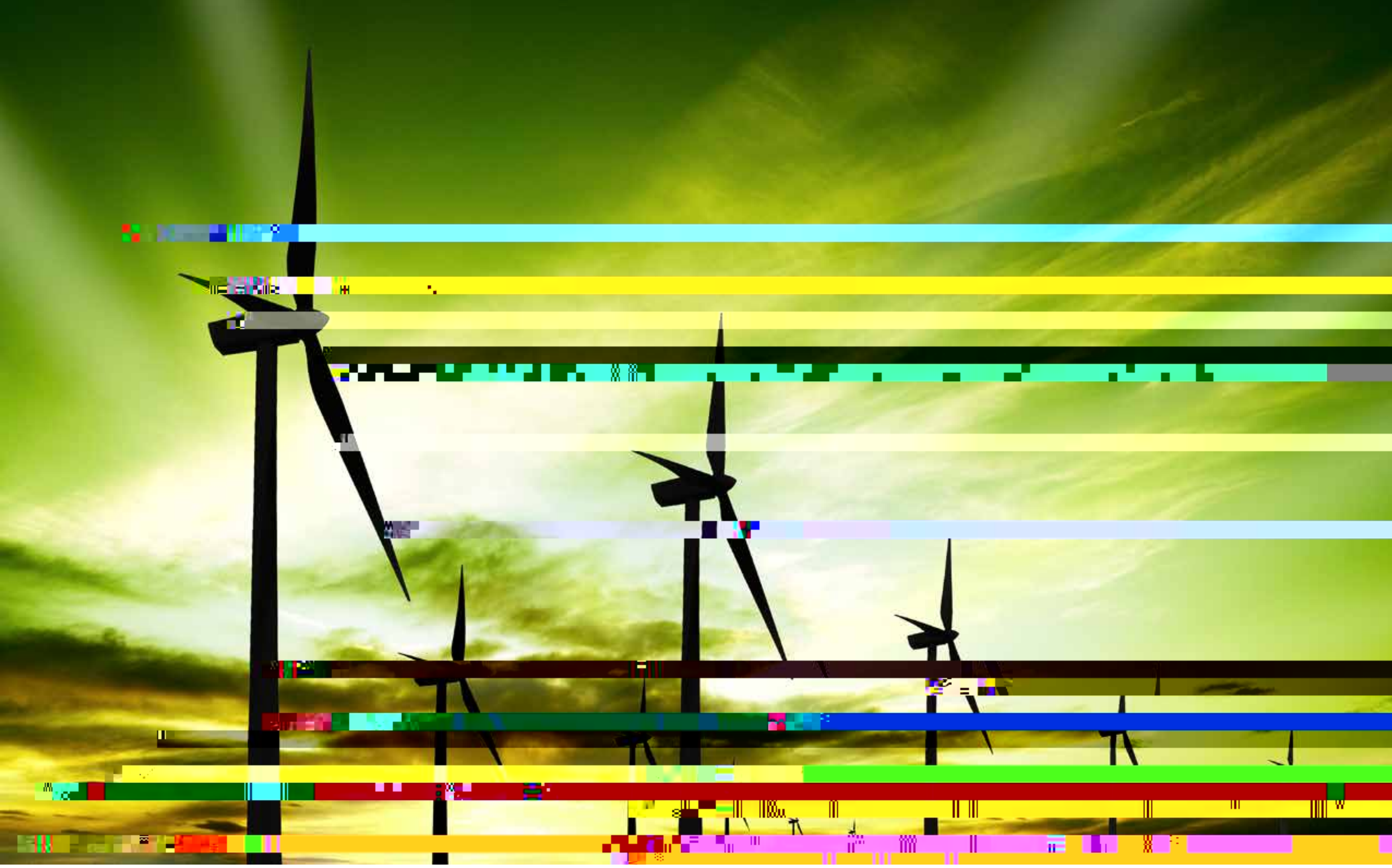
By Jeff Layman, Guillermo Christensen and Eric Wong

The pace of Chinese investment into the United States has markedly increased in recent years and now, for the first time, exceeds investment from the United States into China. Despite this rise in investment, Chinese firms, particularly in the energy and technology sectors, see the United States as a difficult place to do business due to regulatory uncertainties and a perceived anti-China bias by the Committee on Foreign Investment in the United States (CFIUS).

CFIUS is an interagency committee made up of representatives from nine federal agencies, including the Department of Defense, the Department of State, and the Department of Homeland Security, that has authority to initiate review of almost any foreign investment in a U.S. company or asset that may have an impact on national security. During the review process, CFIUS will first determine whether the foreign investment is a "covered" transaction—specifically, does the completion of the transaction result in foreign control of any person engaged in interstate commerce in the United States? If so, CFIUS will then consider whether the transaction raises potential U.S. national security or critical infrastructure implications. If CFIUS determines that the proposed investment creates security or infrastructure risks, then it may block the transaction or request the parties to take certain steps to mitigate such risk. For example, the businesses involved might restructure the transaction so as to prevent the foreign party from gaining control over certain assets or businesses that CFIUS deems sensitive.

Some Chinese companies have had difficulties in obtaining approval from CFIUS, while many others have walked away from deals once a CFIUS dimension emerged. One of the main challenges encountered by Chinese companies with respect to the review process is that it is difficult to predict what CFIUS will consider to be a national security threat. The governing regulations give CFIUS wide discretion to make that determination, which has made it difficult for some Chinese companies to predict which transactions will trigger national security concerns. CFIUS has broadened the scope of its investigations to reach into inquires about the non-U.S. activities of a foreign acquirer in countries the United States considers unfriendly and subject to sanctions by the Treasury Department, such as Syria, Iran, and Sudan. The lack of transparency in the CFIUS process further adds to the perception that the rules are stacked against Chinese companies.



Note, however, that wind farm technology is unlikely to be considered critical infrastructure (unlike for example, the U.S. drilling leases under the CNOOC-Nexen transaction or the U.S. technology under the Huawei-3 Leaf transaction). The fact that wind farm technology is not critical infrastructure has reinforced the perception among many Chinese that the Ralls decision is an example of politically motivated protectionism, coming as it did during a presidential election. Adding to this is the fact that China is known to have strong experience in constructing and operating wind farms domestically. Going forward, the specific risk of failing to obtain CFIUS approval for wind farm projects in the United States can be minimized by selecting locations for wind farm and other energy projects in areas that are not near any sensitive locations, such as military bases.

More broadly, as more Chinese investments enter the U.S. market— 2013 saw Chinese buyers again top the list of deals submitted to CFIUS, as they did in 2012—we will inevitably see periods of political resistance and polarization in response. There is a danger that the national security review process under CFIUS could become further politicized and the list of issues likely to pose "national security" concerns could expand beyond what most observers would consider to be a legitimate scope. For example, opponents of the 2013 Shuanghui acquisition of the U.S. pork processor Smithfield suggested that food security should be included in the definition of U.S. national security—and at least one amendment to the CFIUS statute is floating in Congress to add more agencies to the review process. Other proposals include one to ensure that greenfield investments are also subject to CFIUS review. The United States should aim to provide more transparency and guidance to companies as they go through the CFIUS process to mitigate the risk that potential investors will view CFIUS as a cover for U.S. protectionist tendencies.

By Eric Redman

Twenty years ago, as a lawyer, I was one of many Americans the United States hired to provide somewhat useful (and somewhat useless) economic restructuring advice to Russia. My field was Russia's electric power sector. One central question many American businesses eager to enter into Russia asked me was: "How do you know you are dealing with the right Russian?"

I could no better answer this question than other Americans, despite speaking some Russian and having a wonderful Russian interpreter. But I found something else more troubling, if not outright alarming: a significant number of Americans turning up in Moscow in pursuit of business deals were individuals I definitely would not trust myself. I shuddered to think how the Russians could answer the same question: "How do you know you are dealing with the right American?"

There were no easy answers to that either. In those rather chaotic early days, lack of reputational screening mechanisms on both sides led to a lot of bad business deals—which, I believe, contributed to the souring of our relationships with Russia in the business sector and well beyond it.

The United States and China have the opportunity to avoid repeating the mistakes the U.S. and Russia made in the immediate post-Cold War years when both countries first opened their economies to the other side. World peace, global environment, human health, and rising global standards of living all depend on China and the United States cooperating closely, despite the obvious and powerful centrifugal forces that could fling our countries into separation and conflicts. The recent bilateral climate and clean energy accord is a promising model of this.

This context makes Chinese direct investment in the United States particularly vital. China's great store of U.S. dollars provides the means—through direct investment in the U.S.—to knit

LP Amina is a U.S. clean energy start-up focusing on a wide range of cleaner energy technologies to provide China and the world's other major energy-rich nations with an environmentally and economically sustainable means to use their resources. As the company has grown, my major concerns have included

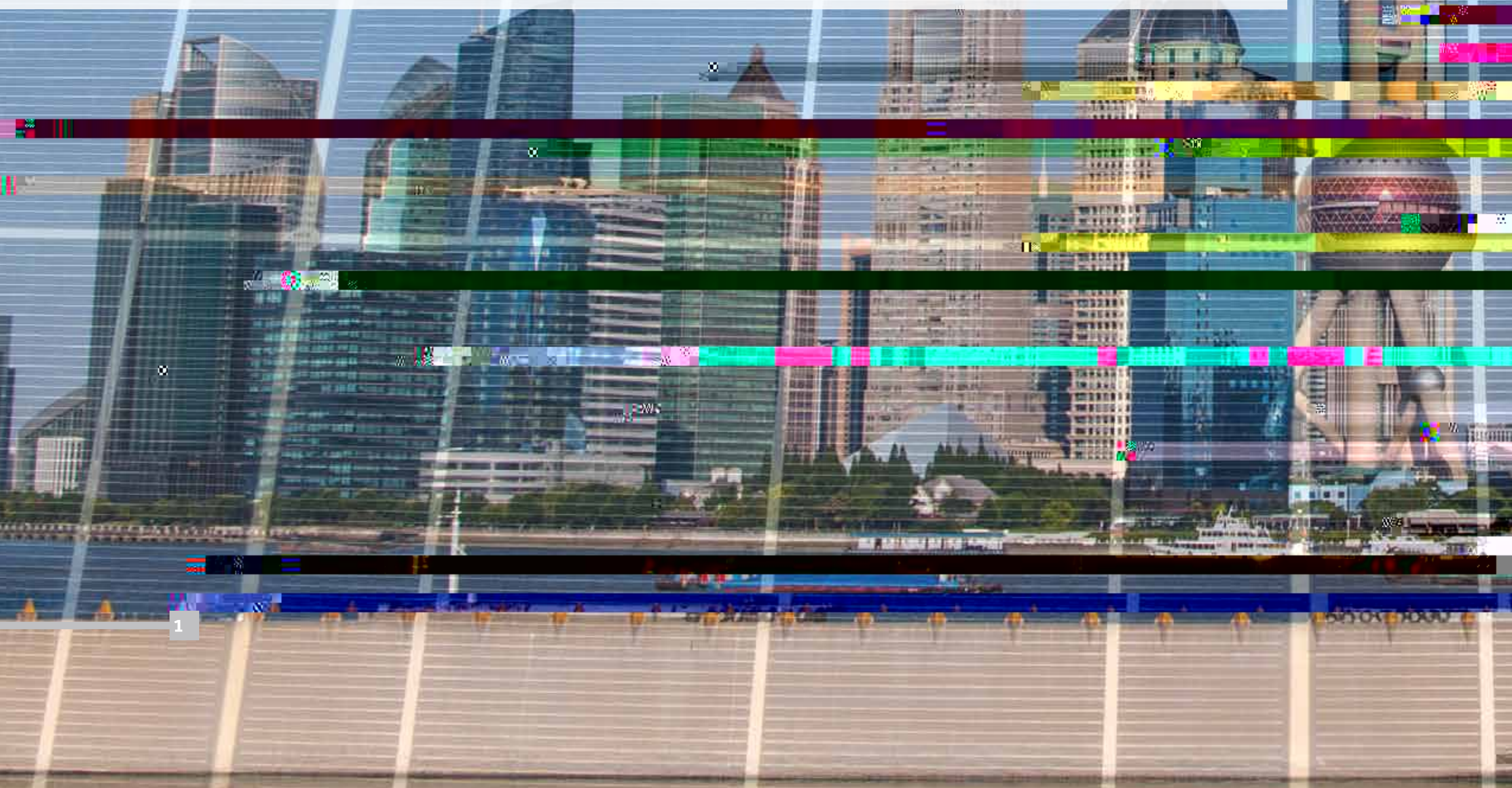
Finding the right China investment partner can be challenging. It is important to find the most suitable partner at each stage along the business roadmap, and good partner relations that work and are successful at one level may not be suitable at another. For us, having a local-level partner to implement the pilot and prove the technology and a major state-level investor to invest in it and help take it abroad is a winning combination. Investment of time and equipment by the former is of utmost importance, while investment of capital by the latter is critical.

As a real-life example, in 2012 LP Amina established a joint venture to pilot one of its clean coal technologies in Shanxi, China, with the local partner providing the power plant and LP Amina providing the technology. As part of the piloting effort, we have involved U.S. research institutions and technology partners to provide additional expertise and validation with the goal of supporting market entry into the United States. Once proven, this technology will be ready for U.S. commercialization and can help create jobs, reduce emissions, and improve U.S. energy security.

Cultivating a technology from concept through "bench-scale" laboratory development to pilot stage and eventually commercialization cannot happen without investment. Without funding, no technology will move forward—no matter how innovative and cutting-edge it is. Therefore, the interest of Chinese investors in helping LP Amina to bring this pilot to commercial-scale in the United States is a key element in the project's success and our overall corporate development strategy.

Every step of the way, LP Amina is consciously evaluating the two countries' energy policy landscapes. We reach out to inform the key government stakeholders to ensure we are reflecting their needs where possible. Positioned this way, our pilot and its commercialization have the potential to become an example of successful business realized through U.S.-China collaboration.

At the company level, where I operate on a daily basis, I think we are doing what we should to promote clean energy technologies, stronger investment environments, and better bilateral relations between the world's two energy powerhouses. However, more needs to be done on the institutional level to ensure that potential Chinese energy investors interested



I once heard a high-level Chinese National Energy Administration official compare the Chinese who want to invest in the United States to rural migrant workers who attempt to buy simple stuffed steamed buns in a fancy five-star restaurant in Beijing. Chinese investing in the United States or any developed markets should begin with modest ambitions while keeping an open mind about operating in a new environment. I know he is not alone. The United States is just as complex a society as China, but in very different ways. Chinese businesses should not expect Chinese business customs to work in the United States. Meanwhile, the goodwill efforts of these Chinese businessmen deserve recognition.

Additionally, the United States should not view Chinese investors as intruders or national security threats a priori. The motivation for Chinese firms to enter the United States is just the same as other investors: to go into markets that hold potential for profits. There are many opportunities for U.S. firms to work together with Chinese companies in the United States, even though

To help bring the technology and capital benefits from Chinese clean energy FDI into the United States, Duke Energy began working with Chinese companies with an approach contrary to most other U.S. companies in China. Duke's strategy was threefold:

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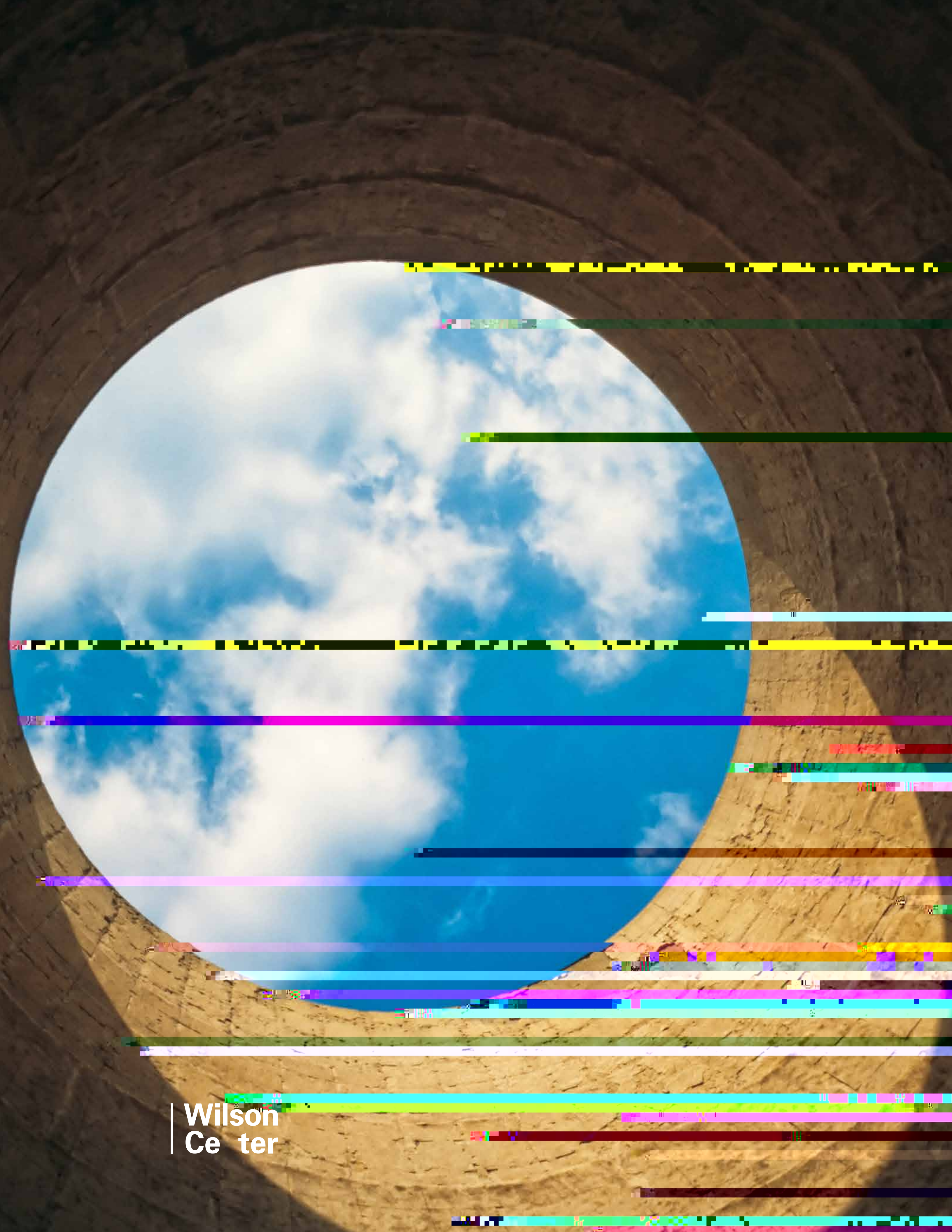
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