
Energy Sector Alert Series: Energy and Environmental Policy Under President Trump

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This is the final alert in an eight-week series that provided a broad look at current and emerging issues facing the energy sector. Lawyers from across the firm have addressed issues ranging from cybersecurity, antitrust and intellectual property to the impact of both Brexit and the presidential election on the energy industry. [Read our recent publications](#), including previous articles in the series.

Following Donald Trump's unexpected victory in last week's presidential election, President-elect Trump enters office with a unified Republican Congress behind him and the ability to shape energy and environmental policy in the coming term. Mr. Trump wants to boost domestic fossil fuel production, something he sees as an energy issue, a jobs issue and a security issue. This will take the form of resurrecting important infrastructure projects such as the Keystone XL pipeline and expanding mineral development on federal lands, onshore and offshore. Mr. Trump will also seek to unwind existing regulations developed by the Obama Administration that regulate fossil fuel exploitation and use, not least of which is the Clean Power Plan. Meanwhile, Mr. Trump has expressed opposition to the Paris Agreement, and can be expected to try to walk back from that and other international commitments to address climate change. Overall, Mr. Trump's administration is expected to be very friendly to domestic energy production. Given this position and Mr. Trump's robust plans to reform federal regulations, observers expect an outpouring of interest in new projects.

President-Elect Trump's 100-Day Plan

Mr. Trump's plan for his first 100 days in office does not include a section devoted to energy or environmental issues, but those issues feature prominently within his top priorities. The section of his 100-day plan devoted to "actions to protect American workers" includes three commitments related to energy and environmental policy:

1. Mr. Trump proposes to "lift the restrictions on the production of \$50 trillion dollars' worth of job-producing American energy reserves, including shale, oil, natural gas and clean coal."

Mr. Trump has not explicitly explained what he means by “restrictions,” but he will likely seek to both roll back existing and eliminate proposed regulations that affect fossil fuel production, whether those are regulations directly affecting resource production processes or regulations that seek to limit the use of fossil fuels in energy generation. Mr. Trump likely also plans to lift existing limits on the availability of federally owned lands for resource development, both onshore and offshore.

2. Mr. Trump also proposes to “lift the Obama-Clinton roadblocks and allow vital energy infrastructure projects, like the Keystone Pipeline, to move forward.” Executive action by the Obama Administration blocked construction of the Keystone XL pipeline, and it should be relatively straightforward for a Trump Administration to reverse that course and resurrect the TransCanada project. While Mr. Trump refers explicitly only to the Keystone XL pipeline, he may also support continuation of the Dakota Access Pipeline project—which the Obama Administration helped stall earlier this year in response to strong public opposition.
3. Finally, Mr. Trump proposes to “cancel billions in payments to U.N. climate change programs and use the money to fix America’s water and environmental infrastructure.” The reference to “U.N. climate change programs” presumably includes US commitments to the Green Climate Fund, set up to assist developing countries in transitioning to lower-emitting forms of energy.

Mr. Trump’s plan also lists a number of legislative priorities, including an “American Energy & Infrastructure Act.” Mr. Trump proposes \$1 trillion in infrastructure investment over 10 years. This would presumably include the energy infrastructure projects and the “water and environmental infrastructure” projects discussed elsewhere in his plan. Mr. Trump promises that this bill will be revenue neutral and suggests investment will come from private sources, with the government engaging in public-private partnerships and offering tax incentives.

Finally, Mr. Trump’s 100-day plan includes a number of broader elements that, while not specifically tied to matters of energy and environmental policy, would impact that area all the same. Mr. Trump says that he will reverse President Obama’s “unconstitutional executive action[s], memorandum[a] and order[s]”; that he will require the elimination of two regulations for every one new regulation; and that he will impose a hiring freeze on federal employees. If implemented, these actions would combine with Mr. Trump’s more explicit efforts to scale back environmental regulation by removing restrictions based on executive action by President Obama, by targeting existing regulations that do not fit with the new administration’s agenda, and by decreasing, through attrition, the staffs of agencies such as the Environmental Protection Agency (EPA), Department of the Interior, Department of Energy and Federal Energy Regulatory Commission that oversee the energy sector and enforce environmental laws.

Clean Power Plan

Although it is not a feature of his 100-day plan, Mr. Trump has also been repeatedly critical of the Clean Power Plan (CPP), the EPA’s rule to regulate greenhouse gas emissions from the energy generation sector. The EPA has already finalized the CPP, but the rule remains subject to legal challenge. The DC Circuit Court has heard arguments on the consolidated challenges to the CPP

but has yet to issue its judgment, and an appeal to the US Supreme Court is likely to follow when it does.

Mr. Trump has options to roll back the CPP, but doing so is not as straightforward as enacting some of his other, affirmative priorities. The Trump Administration could choose not to defend the law as it continues to wind its way through the courts. But other stakeholders who have intervened to defend the regulatory action will have the right to proceed, even if the United States pulls back. A Trump-led EPA could also promulgate a new rule that negates the existing one. But that rule would need to go through standard notice-and-comment procedures, at the end of which it too would be subject to legal challenge. And even if the CPP is successfully eliminated, either in litigation or through regulatory appeal, states that have moved forward with implementation plans in any event may proceed and thereby dull the effect of a successful reversal.

Paris Climate Agreement

Finally, Mr. Trump has signaled that he plans to withdraw the United States from the Paris Climate Agreement reached last year. As had been expected, enough countries ratified the Paris Agreement earlier this month for it to enter into force. That fact complicates Mr. Trump's options for withdrawing US participation. Under the terms of the Paris Agreement, it takes a long time—four years—for a country to withdraw. But recent reporting suggests that Mr. Trump's transition team is looking for creative alternatives, including withdrawing from the UN Framework Convention on Climate Change—the 1992 treaty under which the Paris Agreement was developed—altogether, a process that could be completed in a year.

Mr. Trump's plans to suspend payments to the Green Climate Fund could also undermine the Paris Agreement by putting a dent in the primary source of funding for developing countries, including major emitters like India, that need help to meet their own Paris Agreement commitments.

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