
Energy Sector Alert Series: The Future of Energy and Environment Policy Under a Clinton or Trump Presidency

SEPTEMBER 29, 2016

Over the next eight weeks, we will provide a broad look at current and emerging issues facing the energy sector in a series of alerts. In this series, lawyers from across the firm will discuss issues ranging from cybersecurity, antitrust and intellectual property to the impact of both Brexit and the upcoming presidential election on the energy industry. [Read our recent publications](#), including articles from a previous alert series published earlier this year.

Following the much-anticipated first round of the presidential debates on Monday, all eyes are on the two candidates and their contrasting visions for the future of the United States. With just under six weeks remaining until the election, we take stock of each candidate's positions on energy, climate change and environmental regulations and discuss what the regulatory landscape might look like under a President Clinton or President Trump. We also offer an analysis of the implications of a potential flip in Senate control coming out of November's many tight Senate races.

1. An About-Face in Energy and Environmental Policy under a Trump Presidency

Donald Trump has been critical of the direction of the Obama Administration on issues of energy and environmental policy and has promised to reverse course on many of President Obama's initiatives. Mr. Trump's most comprehensive statement on his own energy policy, made during a May 26 speech in North Dakota, reflects a desire to achieve US energy independence. To accomplish this goal, he would likely look to scale back federal regulation of the energy sector; increase investment in fossil fuel development and mid-stream infrastructure; and reverse the prioritization and federal investment in renewable energy. Mr. Trump also supports greater use of nuclear power.

Environmental Regulations. Mr. Trump has called for a sweeping deregulation of fossil fuel production and plans to rescind a number of President Obama's cornerstone environmental and energy initiatives and achievements. For example, Mr. Trump has suggested he would rescind the Clean Power Plan—a regulation promulgated by the Environmental Protection Agency (EPA) to regulate greenhouse gas emissions from the nation's energy generation fleet. Mr. Trump has also said that the Waters of the United States rule—another EPA regulation that defines the extent of

federal jurisdiction under the Clean Water Act—would go if he were elected.

Reversing these regulations, both promulgated by the EPA, would not be a simple task. A rule reversal would require another EPA rulemaking, complete with a public notice-and-comment process. Mr. Trump might be aided by the ongoing legal fight over the rules, choosing to step back from defending the rules against the legal challenges brought against both by affected stakeholders. Such a move is not unprecedented, but neither is it a guarantee for success. For each rule, environmental groups and other proponents of the regulations have intervened in support. A court could affirm that the regulations were within the EPA's authority and otherwise legally promulgated, even if a new administration tacitly or actively opposes them.

Climate Change. Mr. Trump does not believe that climate change is a top national policy priority and has expressed his intention to withdraw the United States from the Paris Climate Agreement reached in late 2015. As with the already promulgated regulations, Mr. Trump may be constrained in his ability to reverse the Obama Administration's commitments. Once the Paris Agreement is ratified—which is predicted to occur by the end of the year—ratifying countries may not withdraw for four years. Even if the United States cannot officially withdraw, however, Mr. Trump could likely limit the impact of the Paris Agreement, which allows countries to set their own objectives and contains no enforcement mechanism, beyond taking a name-and-shame approach to countries that fail to measure up.

Fossil Fuels. Mr. Trump wants to see an increase in fossil fuel development, including increasing investment in coal and natural gas. He has advocated for removing regulatory restraints on the coal industry and protecting and expanding job opportunities for American coal miners. Mr. Trump's proposal also includes a plan to expand production of all types of fossil fuels on federal land, including increased oil and gas exploration and production on the outer-continental shelf. Mr. Trump's broad proposal to implement a freeze on all new federal regulation would also stimulate the fossil fuel industry. While he generally favors the use of hydraulic fracturing in oil and gas production, Mr. Trump has deviated from the Republican platform by agreeing that local governments should have a say in whether fracking can take place in their communities.

Energy Infrastructure. In the aftermath of the Obama Administration's actions on the Dakota Access pipeline, Mr. Trump vowed to expedite the federal government's approval of energy infrastructure projects by doing away with burdensome environmental regulations. Mr. Trump has also indicated that he would encourage Trans Canada to renew its application to build the Keystone XL oil pipeline, reflecting a broad position in favor of the development of oil and gas pipelines.

Renewable Energy. Mr. Trump likely would work to reverse many of the Obama Administration's policies to promote and prioritize the development of renewable energy. Mr. Trump has been critical of renewable energy investments and technologies, citing the demise of federally funded Solyndra as evidence that government investment in renewable energy technologies is not appropriate. Mr. Trump has also criticized solar energy technologies as expensive and unreliable and wind energy technologies for their impacts on birds.

2. Continued Push for Renewables as Part of an All-of-the-Above Clinton Platform

Hillary Clinton has outlined an all-of-the-above energy agenda focused on further investing in clean energy, modernizing America's energy infrastructure, promoting responsible domestic drilling for oil and natural gas, and building on many of the core energy and environmental reforms implemented by President Obama like the Clean Power Plan and Paris Climate Agreement.

Environmental Regulations. Secretary Clinton supports the Clean Power Plan and has characterized it as part of a broader effort she will implement to impose “smart pollution and efficiency standards.” Beyond that, Secretary Clinton supports additional domestic policies intended to reduce carbon emissions.

Renewable Energy. A Clinton White House would likely seek to continue the Obama Administration's unprecedented record of support for renewable energy development. Secretary Clinton has vowed to make the United States the next clean energy superpower. Her key proposals in this area include a \$60 billion Clean Energy Challenge intended to increase the share of renewable generation to 25 percent of the national energy mix by 2025. Secretary Clinton has also committed to install 500 million solar panels by 2020 to support a goal of generating enough renewable energy to power every home in America.

Energy Infrastructure. Secretary Clinton has issued a large-scale infrastructure plan and has committed to continue to prioritize the permitting, development and repair of large-scale energy infrastructure across the country. Her proposals, if implemented, would build on the Obama Administration's infrastructure permitting reforms, including the administration's most recent efforts to implement Title 41 of the Fixing America's Surface Transportation Act (FAST-41), which outlines a wide range of policies intended to streamline the federal permitting of large infrastructure projects.

Climate Change. Secretary Clinton has made a commitment to stand by the Paris Climate Agreement and other international agreements to reduce carbon emissions. The Clinton platform echoes Secretary Clinton's own statements directly: “We are committed to getting 50 percent of our electricity from clean energy sources within a decade, with half a billion solar panels installed within four years and enough renewable energy to power every home in the country.” Without invoking the term “carbon tax,” the party platform also provides, “Democrats believe that carbon dioxide, methane, and other greenhouse gases should be priced to reflect their negative externalities, and to accelerate the transition to a clean energy economy.”

Fossil Fuels. Secretary Clinton has adopted an all-of-the-above energy strategy. She has spoken out in favor of natural gas development, citing it as a bridge fuel in the transition away from coal. Like Mr. Trump, Secretary Clinton has indicated she supports fracking, but also believes that deference should be given to local municipalities who wish to ban fracking in their communities. That said, a Clinton presidency would also likely bring a continued uptick of regulations on coal, oil and natural gas development, including through higher efficiency standards and increased investment in renewable energy. In particular, Secretary Clinton has indicated her support for current policies that either explicitly aim to cut or otherwise have the effect of cutting back on the use of coal in the energy mix. She has proposed a set of programs for economic development, job training and re-education of US coal miners to address the anticipated shift away from coal and “make them an engine of US economic growth in the 21st century.” In addition, Secretary Clinton has indicated an intent to put in

place policies to control methane emissions and close tax loopholes that oil and gas companies currently enjoy.

3. Congressional Races to Watch This November

Control of the Senate is in play in the upcoming election, and a shift in power would bring a potentially dramatic shift to the direction of both the Senate Environment and Public Works and Energy and Natural Resources Committees. In addition to the general party platforms, the Senate leadership on each side of the aisle would bring their own policy preferences, whether continuing as or acceding to the chair of these committees. If the Senate flips—or if Democrats win control of the House or the presidency—there also will likely be a more forceful approach to corporate oversight, including through an uptick of Congressional investigations of energy companies on hot-button issues like hydraulic fracturing or climate science.

Environment and Public Works. Senator James Inhofe (R – OK), who is not up for reelection, is the current chair of the Senate Environment and Public Works Committee. Senator Inhofe, famously skeptical of the science on climate change, strongly supports scaling back environmental regulation and opening up domestic energy production.

For the Democrats, Barbara Boxer (D – CA) is the current ranking member of the committee, and a former chair. But Senator Boxer's term is up in January, and she is not seeking reelection. Senator Tom Carper (D – DE) is expected to favor the Environment and Public Works Committee among those he would have an opportunity to lead. He is likely to succeed Senator Boxer as ranking member or, in the event of a Senate flip, be selected chair.

Energy and Natural Resources. Senator Lisa Murkowski (R – AK), who is expected to easily win reelection, is the current chair of the Senate Energy and Natural Resources Committee. Senator Murkowski has spent much of the current term shepherding a bipartisan, omnibus energy bill through Congress, work which continues as the bill sits in conference committee today. Senator Murkowski has been a strong advocate of resource development and an “all of the above” approach to energy. She supports energy exploration and production on federal land, in her home state of Alaska and elsewhere.

Senator Maria Cantwell (D – WA), who is not up for reelection, is the ranking member of the Committee and is likely to be selected as the chair if the Democrats win control of the chamber in November. Senator Cantwell bills herself as a champion of “smarter energy policies that harness economic opportunities in clean energy to diversify America's energy sources, grow the clean energy economy and lower costs for consumers.”

Authors



Rob Lehman

SENIOR PUBLIC POLICY ADVISOR

Co-Chair, Public Policy and
Legislative Affairs Practice

✉ rob.lehman@wilmerhale.com

☎ +1 202 663 6907