

Biden Lays Down Clean Energy Marker In First 100 Days

By **Keith Goldberg**

Law360 (April 28, 2021, 1:19 PM EDT) -- President Joe Biden's pivot toward clean energy and early steps to tackle climate change defined the first 100 days of his administration's domestic energy policy, though it remains to be seen how much of that early momentum translates into concrete legislative and regulatory action.

Biden made climate change and clean energy development a key prong of his presidential campaign and his administration has hit the ground running, experts say. It started on Day 1 with moves to yank the Trump administration's approval of the controversial Keystone XL pipeline and rejoin the Paris climate agreement. It's continued through Biden's pledge last week to cut U.S. greenhouse gas emissions by at least half from 2005 levels by 2030.

"He said climate was going to be a priority, and it absolutely is a priority," said Latham & Watkins LLP partner Janice Schneider, a former assistant secretary for land management and minerals for the U.S. Department of the Interior during the Obama administration. "It's infused in just about everything we're seeing from the new administration, whether it's domestic or international."

The centering of climate change in Biden's energy policy is epitomized by a sweeping executive order he issued a week into his presidency that directed the federal government to treat climate as both a domestic and foreign policy priority and set a goal of a net-zero carbon economy by 2050.

The order established a domestic climate policy office within the White House led by former U.S. Environmental Protection Agency Administrator Gina McCarthy, as well as a national climate task force chaired by McCarthy that includes representatives from a majority of Cabinet-level federal agencies and White House executive departments.

"The thing that was most significant to me was this concept of ... the whole-of-government approach to climate change," said Kirstin Gibbs, who co-leads Morgan Lewis & Bockius LLP's energy industry practice. "You're really seeing that in everything that's coming out from the administration, but as well as the agencies that he's tasking with various missions."

Energy items contained in the executive order included a goal of 100% zero-carbon electricity by 2035 and doubling U.S. offshore wind capacity by 2030 while pausing new federal oil and gas leasing to broadly review the program, as well as increasing the federal government's own use of clean energy.

The departments of Interior, Energy and Commerce are already moving forward on Biden's offshore wind directive, announcing in March a plan to install at least 30 gigawatts of offshore wind by 2030, with the DOI making plans to lease a highly coveted area of federal waters between New York and New Jersey as early as year's end.

Biden has also given clean energy a central place in his first major, non-COVID-19 legislative proposal. The president's \$2 trillion American Jobs Plan includes a national clean electricity standard that contains the 100% zero-carbon-by-2035 goal, extensions and expansions of clean energy tax credits and hundreds of billions of dollars toward upgrading the electricity grid and increasing transportation electrification.

The plan also nods to the energy transition by spending billions to clean up abandoned coal mines and oil and gas wells, and pushing for the revocation of fossil fuel subsidies.

Morgan Lewis environmental and energy partner Ella Foley Gannon calls Biden's infrastructure plan the Obama-era American Recovery and Reinvestment Act "on steroids."

"I think it reinforces the notion that clean energy and infrastructure is one of the very highest priorities of this administration," Foley Gannon said.

Biden has laid down detailed, ambitious energy policy markers in his first 100 days in office. Now the question is how far will he be able to get.

On the legislative side, experts say an early test of Biden's energy agenda will be negotiations with Congress over any infrastructure bill. Democrats maintain a slim majority on Capitol Hill, and a recent \$568 billion infrastructure proposal from GOP senators indicates there's a wide gulf between Republicans and the White House.

"The infrastructure bill will tell us a lot about how successful [Biden] can be building coalitions for these ideas," Haynes and Boone LLP energy partner Eddy Daniels said. "Do they go for 51 [Senate] votes, or do they go for 60 votes-plus? If they go for 51, maybe they can go bigger, but they're going to be at much more risk."

Former Democratic Sen. Mary Landrieu, who chaired the Senate Committee on Energy and Natural Resources, believes that Biden has shown a willingness to strike bipartisan deals on energy and infrastructure policy.

"But he's clear that he intends to meet these climate objectives," said Landrieu, who's now a Van Ness Feldman LLP senior policy adviser. "He's not shown any weakness or hesitation in that way."

That has some experts predicting that Biden will have to settle for regulation and agency action to advance his clean energy and climate policies. Such moves are already afoot, including the DOI's action on federal energy development, the EPA revisiting Trump-era efforts to roll back vehicle GHG emissions standards, and the Energy Department splashing out cash for clean energy development.

"It'll be [about] execution," Latham's Schneider said of the federal agencies. "Are they going to be able to meet the goal that they've set for themselves?"

Which leads to another defining feature of Biden's first 100 days: the personnel he's put in place

throughout his entire administration to carry out his clean energy and climate policies.

That goes beyond having clean energy champions lead agencies such as the DOI and DOE, experts say. It's things like Biden tabbing McCarthy to serve as his national climate policy adviser and former Secretary of State John Kerry to serve as his special presidential envoy for climate, as well as clean energy industry veterans taking senior DOE posts.

Given the ambitious clean energy and climate goals Biden has laid out, it makes sense that he's looked to people who have long histories of working on the details in these spaces, said Van Ness partner Gwen Keyes Fleming, a former chief of staff to McCarthy and a former EPA regional administrator.

"Because they have delivered the goods before, they are now in the position to help him bridge the gap between ideas and implementation," Keyes Fleming said.

--Editing by Orlando Lorenzo and Alyssa Miller.