

Trump's Election Swings The Energy Policy Pendulum Again

By **Keith Goldberg**

Law360 (November 8, 2024, 9:19 PM EST) -- The reelection of former President Donald Trump means the energy industry faces yet another drastic shift in U.S. policy, continuing a decadelong pattern of regulatory pendulum swings.

Energy attorneys say it's clear that the incoming administration will take immediate aim at President Joe Biden's energy and climate change agenda, just as the previous Trump administration attempted to unwind the agenda of former President Barack Obama. But this time around, their goal of promoting fossil fuel development and use could be potentially bolstered by Republican control of both houses of Congress.

"There is a long list of legislative and administrative actions that are going to directly upend the energy industry that we can anticipate, particularly if we wind up with a unified House and Senate," said Ken Markowitz, who co-heads the climate change group at Akin Gump Strauss Hauer & Feld LLP. "It's a holistic wrecking ball that I expect to take place. The energy components seem to be a priority, and deregulation seems to be at the heart of lot of things that we anticipate."

The biggest immediate question facing energy companies is: What policy moves will the Trump administration prioritize?

"The reality of dealing with regulation or deregulation is the pipeline is only so big," said Venable LLP partner Fred Wagner, a former chief counsel for the U.S. Department of Transportation's Federal Highway Administration under the Obama administration. "There's only so much you can review at any given time with all the other procedural requirements you have."

Here's a rundown of what the energy industry is in for when Trump reenters the White House in January.

An Oil & Gas Revival

After four years of increased regulatory scrutiny and taking a back seat to renewable energy during the Biden administration, the oil and gas industry will once again reap the benefits of Trump's pro-fossil fuel agenda.

"We've seen under the prior Trump administration the pro-oil and -gas, pro-domestic production of hydrocarbons policy," said Wes Williams, who co-heads Akin's energy practice and focuses on oil and

gas deal work. "Everyone is expecting to see that again."

That means a rollback of regulations such as U.S. Environmental Protection Agency greenhouse gas emissions requirements for vehicles, power plants and oil and gas infrastructure, as well as opening up more public lands and waters to drilling.

"The federal government will surely start holding more lease sales and look into ways of streamlining the process for offering leases and allowing their development," said Poe Leggette, who leads the energy industry team at BakerHostetler. "The offshore oil and gas program is probably going to be immediately proposed for revision to offer up more acreage."

Attorneys say another likely immediate move by Trump will be to lift the Biden administration's moratorium on approvals of liquefied natural gas exports.

"President-elect Trump has said he would do that on day one," said Hogan Lovells senior adviser Neil Chatterjee, a former Federal Energy Regulatory Commission chairman during Trump's first term. "FERC has done a pretty good job of evaluating and approving LNG projects, and I think that will continue, probably on a quicker timeline."

Williams said the Trump administration will also likely ease antitrust scrutiny of oil and gas company mergers. It all adds up to an environment that could renew institutional investment in the oil and gas sector, he said.

Choppy Waters Ahead for Renewables and Power

The clean energy industry has ridden a four-year wave of momentum under the Biden administration, fueled by a gusher of government funding through laws headlined by the Inflation Reduction Act. But that momentum could slow, as Trump and Republican congressional leaders have vowed to unwind some or all of that spending.

"With the [congressional] margins as thin as they are, the risk of all-out repeals of the tax credits and incentives under the IRA is pretty low," said John Crossley, a leader of the energy, infrastructure and resources practice area at K&L Gates LLP who focuses on renewable project development. "That said, the new administration is definitely going to want to take its pound of flesh."

Attorneys agree that electric vehicles are the ripest target, given Trump's vocal criticisms of EVs on the campaign trail and from congressional Republicans.

"We will get a pretty good sign within the first 100 days about how aggressive this administration will be to discourage or roll back EV policies," said Levi McAllister, who heads the electric vehicles working group at Morgan Lewis & Bockius LLP.

Attorneys also expect grant and loan programs funded by the IRA and other laws to be scaled back or eliminated, especially for money that hasn't been handed out yet. And Trump's pledge to aggressively impose tariffs could exacerbate supply chain issues that have bedeviled renewable energy development.

Meanwhile, the power sector will likely see an easing of pollution control requirements, most notably, an effort to roll back the EPA's latest rule curbing GHG emissions rule. But attorneys say the clean energy industry has seen this movie before, during Trump's first stint in the White House, and will be

prepared to deal with the sequel. And laws like the IRA have fostered clean energy development and manufacturing in red states, while U.S. power demand will only continue to increase.

"There are still state-based procurement requirements and state-based incentives," said Akin energy partner Vanessa Wilson, who focuses on renewable energy development. "There is still interest from the corporate side. I don't think that's going away."

A Fresh Push to Accelerate Project Permitting

Trump's deregulatory push is expected to include speeding up permitting and relaxing environmental reviews of energy infrastructure projects. Attorneys say that's likely to include rescinding the Biden administration's guidance for federal agencies to implement the National Environmental Policy Act and restoring the guidance from the first Trump administration.

"You'll see a carving away of things that slow the process down, as opposed to the creation of new rules and regulations," Crossley said.

Bipartisan legislation proposed earlier this year could accelerate permitting for fossil fuel, clean energy and transmission projects, but attorneys expect that effort to die in the lame-duck session of Congress.

"I don't think there's going to be any incentive for Republicans to do that," said Wagner, of Venable. "They are going to wait for full control [of Congress] and they will put their own proposal down on paper."

That proposal could include significant rewrites of NEPA or the creation of new exemptions for fossil fuel projects, attorneys say.

But Chatterjee of Hogan Lovells, who previously served as energy adviser to former Senate Majority Leader Mitch McConnell, R-Ky., said any new permitting legislation will likely face uniform opposition from Democrats, especially if it excludes benefits for clean energy or transmission projects. That means the lame-duck session might actually be the best opportunity to broker a permitting deal for a while, Chatterjee said.

"I don't know that Republicans are going to get 60 votes on something that's only beneficial to the natural gas pipeline siting process," Chatterjee said.

A Clean Energy Pushback From States

When Trump first became president in 2017, blue state and local governments responded by enacting policies aimed at boosting clean energy development within their borders. Attorneys expect those efforts to repeat themselves this time around, though they will have limitations, especially with federal grant programs expected to dry up and the potential repeal of portions of the IRA and other laws.

"You could see states try to provide property tax breaks, sales tax exemptions, streamline their own permitting processes," Crossley of K&L Gates said. "That would make things marginally easier, but I think that in comparison to the dollars involved on the federal side, it won't make much of a dent if, in the worst case, everything gets repealed."

If bigger carrots are insufficient, some states may resort to bigger sticks, said Bryan Cave Leighton

Paisner LLP environmental partner Erin Brooks, who focuses on renewable energy development. That could entail a host of things, such as electrification mandates for state vehicle fleets or stiffer renewable energy procurement quotas for utilities, she said.

"States putting additional policies in place to require a certain reliance on renewable energy could be another way states could further that policy, even if they don't have access to direct dollars to support this," Brooks said.

But Markowitz of Akin said many states that have already enacted aggressive climate and clean energy policies might not have much runway to further ratchet up those policies. Not only did Republicans win the presidency and control of the Senate on Election Day, but the GOP also secured control of several state utility commissions and defeated candidates pushing for faster renewable energy adoption.

There's also the matter of relaxed compliance with federal air and water laws, which could benefit more fossil fuel-friendly states.

"Where's the political will?" Markowitz said. "When do you start putting your state at a competitive disadvantage and driving up energy costs for consumers and industry? There are a lot of unknowns."

For Energy Companies, Change Is the Only Certainty

Nothing better epitomizes the energy policy seesaw of the last decade than efforts to regulate GHG power plant emissions. The Obama EPA crafted the Clean Power Plan, only for it to be rescinded and replaced with the Affordable Clean Energy Rule during the first Trump administration. The Biden EPA promptly undid the ACE rule and crafted its own GHG rule, which now stands to be rolled back by the next Trump administration.

While it's true that such swings in federal policy benefit some parts of the energy industry, the temporary nature of those swings is far from ideal, attorneys say.

"What it's going to do is cause uncertainty for the regulated community, which is challenging from a business perspective," Markowitz said. "If there's another change of party in the White House in 2028, then where are we?"

Energy companies are making complex, costly decisions to pursue projects that are measured in years and, frequently, decades. Venable's Wagner said that on some level, their views are policy-agnostic; what they crave the most is consistency and certainty.

"The swings make their investment decisions even more complicated," Wagner said. "The irony is ... they slow down the decision-making process because you don't know what to do. I don't see that changing."

--Additional reporting by Juan-Carlos Rodriguez. Editing by Alanna Weissman.