Trump's First 100 Days: Energy

Analysis of New Administration
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President-elect Trump has criticized government policies supporting renewable energy and infrastructure and has expressed an intention to repeal or roll back the Inflation Reduction Act (IRA), which will require an act of Congress. Republicans have emphasized that grid reliability calls for preserving or adding more dispatchable fossil fuel resources to supplement intermittent resources.

AT A GLANCE

- The Clean Electricity Investment Credit could be a convenient target and somewhat easier to roll back than other sections of the IRA because it applies only to projects that start construction in 2025 and after.
- There will be pressure on the Federal Energy Regulatory Commission to do its part to advance "energy dominance," but dramatic changes in policy aren't likely in the first 100 days for statutory and organizational reasons.
- The new salience of "critical minerals"—and the broad recognition and support that electrification will require increased mineral production—will significantly reshape mining policy over the next four years.

RENEWABLE ENERGY

President-elect Trump's campaign included strong rhetoric critical of governmental policies supporting renewable energy and infrastructure, with an aim to repeal or roll back the IRA and to rescind "unspent" funds under the IRA. While it is hard to predict with any certainty how the Trump administration and Congress will proceed, an incremental rollback is more likely than a wholesale repeal.

Any rollback of the IRA would require an act of Congress, which will be a challenge as a number of Republican states and congressional districts have benefited from the IRA and the investments it has helped to generate. Beyond the traditional renewable energy companies that benefit from the IRA, oil and gas and automotive companies also support some aspects of the IRA, as the statute has provided billions of dollars to renewable fuel, carbon capture and other technologies in which these companies are investing.

Those in the renewable energy industry should prepare for a number of possibilities:

- The most likely move within the power of the executive branch is to impose duties and tariffs, which in many cases will directly increase the cost of renewable energy projects from generation to storage.
- By rulemaking or other executive action, the incoming administration might amend, suspend or delay implementation of IRA-related regulations. The Trump administration may be more favorable to elements, such as domestic content requirements, while rolling back prevailing wage and other requirements.
- The Trump administration might work with Congress to repeal portions of the IRA or to phase out credits and other benefits faster than the current timelines. The Clean Electricity Investment Credit could be a convenient target and somewhat easier to roll back because it applies only to projects that start construction in 2025 and after. We anticipate that projects which have begun construction by the end of 2024, or possibly before a repeal of the applicable IRA provisions, could be grandfathered in.

We also expect continued support for nuclear power. The first Trump administration streamlined licensing for new nuclear power plants and has been supportive of developing small modular and next generation reactors, especially as it relates to data center development and construction.

ENERGY REGULATION & FERC

President-elect Trump's selection of fossil fuel executive Chris Wright as Secretary of Energy and North Dakota Governor Doug Burgum as coordinating chief of a proposed National Energy Council underscores the incoming administration's intent to shift U.S. energy policy away from its current focus on carbon reduction to actively promoting fossil fuel development to reach the stated goal of "energy dominance." With Wright leading the Department of Energy, we expect efforts in support of electric industry decarbonization will sunset and that its program offices will be refocused on expanding fossil fuel production and electric grid resilience and reliability.

We also expect that there will be pressure on the Federal Energy Regulatory Commission (FERC) to do its part to advance energy dominance. Still, dramatic changes in policy at FERC may be somewhat harder to effectuate and discern, in part for statutory and organizational reasons. While the new president will be able to appoint a new chairman from among the sitting commissioners with authority to set FERC's agenda, the composition of FERC may not change immediately with the incoming administration. Three of the five members of the commission are Democrats, and their terms don't start expiring until 2026. However, resignations are possible, and a resignation from among the Democratic commissioners would allow the new administration to nominate a Republican replacement.

On the important issue of electric generation resource adequacy, there is bipartisan consensus that generating resources will be inadequate in certain regions of the nation looking out several years, but Republicans have emphasized that grid reliability calls for preserving or adding more dispatchable fossil fuel resources to supplement intermittent resources. Given the Republican perspective, there may be efforts to diminish the impact of FERC's landmark Order 1920, which requires additional regional transmission planning, project selection and regional funding mechanisms for new transmission, and is disliked by fossil fuel advocates.

MINING

The arrival of unified government control in Washington, DC, will likely bring considerable change to the mining industry. The first Trump administration took executive action on shrinking national monuments and opening federal land to exploration. We expect this to happen again in the first 100 days and expect litigation to snarl these plans for years.

We expect the new Trump administration to take a different approach to mining than it did in its first term. A key is the new salience of "critical minerals" and the broad recognition and support that electrification will require increased mineral production from domestic producers, if possible. An alliance of strange bedfellows has started to form around permitting reform, which may provide an opening for sensible changes. The new administration has momentum from these earlier efforts and should build on these efforts in the first 100 days.

States and tribes will continue to have much to say about any mining projects within or near their borders. A federal tailwind provides a window to consult those states and tribes. It is a good time to present evidence of economic benefit and safe operation to make fair deals so that projects can endure the shifting political winds as a mining project needs all three sovereigns to survive to operation.

This article is part of a broader analysis examining the anticipated challenges and opportunities created by an administration change. Attorneys from several different practice areas contributed to this series of article across multiple legal areas.

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