

Trump Presidency Won't Be A Red Light For Green Energy

By **Keith Goldberg**

Law360, New York (November 10, 2016, 7:50 PM EST) -- President-elect Donald J. Trump has thrown his weight behind fossil fuels and vowed to nix major climate change regulations, but experts say that won't derail U.S. green energy growth, and that states — not the federal government — will continue to take the lead in stimulating development of wind, solar and other clean energy sources.

Aside from some throwaway comments about wind farms killing animals, solar power being too expensive and support for the U.S. biofuel program, Trump offered few clues as to a specific stance on renewable energy during his campaign.

While he has vowed to roll back initiatives that encourage further clean energy development, such as the Clean Power Plan and U.S. participation in the Paris climate change agreement, that won't reverse the industry's momentum, experts say.

"I don't think either of those things were driving economic behavior for renewables," said Mayer Brown LLP tax partner David Burton, who leads the firm's New York renewable energy group. "They're nice to have, but the Clean Power Plan was tied up in litigation anyway, and the Paris accord has no teeth."

Renewable energy backers say they'd be surprised if Trump, even with a Republican-led Congress, tried to nix the federal renewable production and investment tax credits that received multiyear extensions in last year's omnibus appropriations bill.

For one thing, the PTC is set to expire in 2020, while the ITC will drop in value in 2019 and reach its lowest level in 2022. What's more, the credits have sparked wind and solar development booms in several Republican-leaning states.

"They already have a phaseout, so why have that war?" Burton said. "They have bipartisan support in Congress. Why alienate your Republican colleagues like [Sens.] Chuck Grassley, Susan Collins, John Thune and Orrin Hatch that have been supportive of renewables and have renewables in their states?"

One potential red flag for the renewables industry is Trump's repeated vows to rework or rip up international trade agreements, as well as hike tariffs on Chinese goods. For example, many solar panels and other solar components are made by Chinese manufacturers.

"To the degree he imposes tariffs or undoes trade agreements that are being used for import of wind turbines, solar panels and the like, that could have an impact in a lot of different ways," said Merrill

Kramer, who chairs Sullivan & Worcester LLP's sustainable energy group.

Unlike fossil fuels, Trump likely won't push policies to aggressively promote renewable energy development. Experts say that in a sense, it's business as usual for the renewables sector, which will continue to focus on states to guide their investment and development decisions.

Many states have climate change programs that will necessitate shifts to cleaner energy sources. Dozens of states, plus the District of Columbia, have renewable portfolio standards that require utilities to draw increasing percentages of their power from renewable sources.

And several states are beefing up their climate and clean energy policies. New York recently updated its clean energy standard to require half of the state's electricity to come from renewable sources by 2030. On the opposite coast, California recently extended its landmark climate change program known as A.B. 32 and enacted laws mandating boosts in distributed generation and energy storage.

"The election is not going to change how those state legislatures and state public utility commissions think about renewables and their support of renewables," Burton said. "California has been the most significant driver of renewable policy in this country, and I think that will continue."

From utility-scale wind farms to rooftop solar and other forms of distributed generation, to tech companies, retailers and other large corporations generating or procuring their own power, all of that renewable energy is going to make its way onto the electric grid, according to Chris Carr, who heads Morrison & Foerster LLP's environment and energy group.

"There's going to be increasing need for transmission development and grid harmonization," Carr said. "That's going to be huge."

Actions at the state level have resulted in regional grid operators taking steps to integrate more renewables onto their portions of the grid and their wholesale electricity markets. For example, ISO New England Inc. is mulling the use of carbon pricing in order to accommodate the renewable portfolio standard programs of states within its footprint.

"Those [state] policies are not going away," University of Richmond law professor Joel Eisen said. "Inevitably, they will have an impact on the wholesale markets."

With wholesale markets and large-scale transmission development subject to the jurisdiction of the Federal Energy Regulatory Commission, it could pose an interesting dilemma for a Trump administration seemingly devoted to fossil fuels. A full commission with a Republican majority is unlikely to push any broad initiatives to encourage more green power, but actively thwarting states and regional transmission organizations that are dead set on accommodating more clean and distributed energy on their portions of the grid might be more trouble than it's worth, experts say.

The same goes for any other attempt to issue federal regulations that would interfere with states' decision-making on renewable energy, according to Kramer.

"The driver right now is state policy and economics, and Republican policy is in favor of states' rights," Kramer said. "All of those things would lessen the desire to put a fly in the ointment of the renewable energy industry. The renewable train has left the station; it's difficult to turn it around."

--Editing by Katherine Rautenberg and Catherine Sum.

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