

States, Corporate America Will Fill Clean Energy Policy Gap

By **Keith Goldberg**

Law360, New York (March 14, 2017, 6:22 PM EDT) -- After enjoying significant support from the Obama administration, the renewable energy industry has taken a back seat to fossil fuel development under President Donald J. Trump. While Trump has pushed pipeline projects like Keystone XL and Dakota Access and rolled back regulations on coal mining, he's been silent on wind, solar and other clean energy sources.

"The new administration is clearly is focusing on fossil fuels," said Skip Rankin, who chairs Baker & McKenzie LLP's global renewable energy and clean technology practice. "I keep hop[ing] ... that they won't turn their backs completely on renewables."

While lack of interest from the Trump administration won't derail the growth of renewables, experts say developers may turn much of their attention away from Washington and toward state and local governments, as well as the private sector, to keep its momentum going.

Here are four areas that will be of particular interest to the clean energy sector:

State and Local Clean Energy Policies

If anything, the Trump administration's fossil fuels focus only reinforces the attention of renewable companies on states to guide their investment and development decisions. 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 states like New York and California are boosting their RPS requirements to even higher levels.

While that's an obvious area of focus for renewable developers, experts say they ought to pay just as much attention to changes in state tax policies — Oklahoma, for one, is advancing legislation that would slash subsidies for the wind industry — and distributed energy policies like solar net metering, as well as siting and permitting policies for renewable projects and the transmission infrastructure needed to connect them to the grid.

"With all the focus on siting eminent domain and permitting with the building of pipeline infrastructure, it's also created issues for renewables," said Denise Bode, a partner at Michael Best Strategies and a former CEO of the American Wind Energy Association.

And don't ignore cities, many of which are pursuing ambitious climate change and renewable energy policies, according to Ali Zaidi, a former Obama White House climate change official who is now a senior energy and climate adviser at Morrison & Foerster LLP.

"They tend to operate less at the market level and more at the regulatory level: building codes, permitting for electric vehicle stations and rooftop solar installations," Zaidi said. "That's a place of great interest to the renewable sector."

Corporate Power Purchase Agreements

The power purchase agreement is the financial lifeblood for a renewable project developer, but with power demand and power prices relatively flat, it's increasingly difficult to secure one from a utility.

Enter corporate America.

Tech giants, retailers and other companies are increasingly looking to power their operations with renewables. They're also moving beyond simply purchasing renewable energy credits from a project to offset their energy use to purchasing power directly from a facility or generating their own clean energy on-site.

"We're working with companies that are even selling back excess power to the grid," Zaidi said.

While the length of corporate power purchase agreements tends to be shorter than utility PPAs — 12 to 15 years, as opposed to 20 years — they tend to be priced more favorably for project developers, according to Rankin.

"It avoids a situation where developers have to face going merchant for a while, or locking in a less desirable rate with a utility for a longer time period," Rankin said. "It is giving them a good price at which they can go forward and develop and finance their projects."

And anything that expands the PPA pool is a good thing, experts say. Tax equity investors — a crucial financing source for renewable development — won't sink their cash into pure merchant projects, projects whose revenues solely depend on how much power they're able to sell.

"You want to have that PPA secured before you build," Bode said.

Federal and State Energy Storage Policies

Silver bullet. Holy grail. These are just a couple of terms that have been used by the renewable sector to

describe the promise of energy storage, still-nascent technologies with the potential to solve the intermittency problem for wind and solar energy, especially as more states and municipalities boost their renewable energy requirements.

"When you start talking about 50 percent and 100 percent [RPS standards], the opportunity starts knocking on the door of energy storage," Zaidi said. "It's good for renewables to have increased opportunities for storage to get into the game, because it facilitates greater integration of variable power."

California has regulations that require increased deployment of energy storage on the grid, while states like New York are including energy storage in pricing and compensation policies for distributed energy resources. But experts say renewable developers will be especially focused on what the Federal Energy Regulatory Commission has to say on the energy storage issue.

FERC recently proposed rules for energy storage providers to participate in wholesale electricity markets and issued a policy statement explaining how energy storage providers could earn both cost-of-service-based rates and market-based rates.

With FERC still lacking a quorum of commissioners, and Trump's nominees likely to share his fossil fuel focus, finalizing energy storage rules may not be an immediate priority, experts say. But as more renewables force their way onto the grid, determining the role of energy storage in power markets is a policy question that won't go away.

"These are issues that are hitting the market and independent leaders like FERC need to deal with them," Zaidi said.

Federal Infrastructure Development Programs

Trump has said that infrastructure development will be a priority of his administration, and a \$1 trillion number has been floated as the amount of potential investment. For the renewable industry, upgrading the nation's electric grid should get a sizable chunk of any investment.

"It's all about having a good highway, whether it's an electron highway or highways you drive a truck on," Bode said.

Experts say a major hurdle for renewable projects grid access is that most developers can't foot the bill of building a transmission line connecting their projects to the grid on their own. Not only would funding of transmission upgrades be a significant boost, but so would easing permitting restrictions for projects and transmission projects on federal lands and in federal waters, as well as working with states to improve transmission siting policies.

"To me, a focus on upgrading our grid is well overdue," Rankin said. "Federal money would go a long way to help states improve their transmission capacity. Yes, the states take the lead on siting and

permitting, but leadership can come from FERC and the Department of Energy in terms of encouraging that."

While Trump has thrown his weight behind fossil fuel infrastructure projects like Keystone XL and Dakota Access, the renewable industry is hoping his administration will ultimately embrace an all-of-the-above approach to energy infrastructure projects as long as it makes economic sense. On Tuesday, a coalition of clean energy, manufacturing and construction groups urged congressional leaders to include grid upgrades in any proposed infrastructure bill.

"Renewables folks are not tuning out of Washington and they're not letting anyone off the hook," Zaidi said. "There's a sense that there's a great deal of momentum, that the technology and economics are there, and they've earned a seat at the table for the discussion about the nation's energy policy."

--Editing by Katherine Rautenberg and Pamela Wilkinson

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