

## ENERGY/ENVIRONMENT



**OVERVIEW.** The energy sector is stronger than ever with oil and natural gas production levels that have made the U.S. the largest producer of hydrocarbons in the world. Expanded drilling opportunities<sup>1</sup> and the streamlining of regulatory requirements should provide for sector growth in the near future. Coal, which sustained a major decline during the previous decade due in part to regulatory hostility and to the low price for natural gas, is now achieving some significant recovery as U.S. exports are rapidly expanding. The resurgence of nuclear power has not materialized as plans to build two new reactors in South Carolina were scrapped in

July, and a hoped for resolution for long-term storage of nuclear waste has also run into problems. Renewables (including hydro, wind, solar, geothermal and biofuels) are now 12 percent of total production and have grown modestly with the largest percentage increase in solar power, which has more than doubled. Ethanol and other renewable fuels are holding steady or growing modestly. Perhaps the biggest energy issue demanding immediate attention is the reliability of the grid, with concern about security as a major factor.

There is movement on both the House and Senate Energy Committees to take a fresh look at energy policy, leading perhaps to another effort at comprehensive legislation. The approach in the two committees is at odds, however, with the Senate focused on trying to move a comprehensive bill and the House more focused on passing individual bills. Given all this, it is hard to see how a substantial energy bill is attainable this Session. Far more likely is piecemeal legislation, perhaps as part of other bills, and a focus on regulatory efforts to roll back a host of Obama Administration rules which industry sees as burdensome.

**COMPREHENSIVE ENERGY LEGISLATION.** Congress attempted to pass comprehensive energy legislation in 2016 with bills that passed the House and Senate, but failed to make it across the finish line as conferees could not reach agreement over some contentious, though mostly regional, natural resources issues. That dynamic, and the pressure of an election year, has made it hard to see how comprehensive energy legislation could make much progress this year. The Senate Energy and Natural Resources Committee leadership continues to push for a comprehensive approach focused mostly on improving efficiency but has made little progress. Chairwoman Lisa Murkowski (R-AK) may also find it hard to get a commitment for floor time from Majority Leader McConnell, in part due to the compressed schedule and the glut of other priority issues in the queue. In fact, Senator Murkowski achieved her primary legislative priority in the tax reform bill, which included language opening the Alaska National Wildlife Refuge (ANWR) to drilling.

**INFRASTRUCTURE LEGISLATION.** Energy issues could get rolled into the comprehensive infrastructure bill being considered by the White House and Congressional leaders. Infrastructure, in this context, is

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<sup>1</sup> Note that in addition to allowing oil and gas exploration in the Alaska National Wildlife Refuge (ANWR) as authorized in the tax reform bill passed in late December, the Trump Administration announced plans on January 4 to open up areas in the Atlantic, Pacific and Arctic to drilling leases over the next five years allowing oil and gas exploration in up to 90 percent of the U.S. outer continental shelf areas.

more than just roads and bridges. Leaders in both parties have been talking about a much broader approach that could incorporate pipelines, electricity grids, energy export facilities, and other infrastructure critical to the sector. Furthermore, since most of the energy infrastructure is privately owned, legislation to encourage or facilitate economic growth through permitting reform could stimulate job and investment growth at no cost to the taxpayers. Look for measures that accelerate and streamline the approval process and increase opportunities for production to be part of any infrastructure legislation.

**ENERGY TAX EXTENDERS.** Several tax incentives that are beneficial to energy sectors have expired, and there will be an effort to extend those incentives as part of an extenders package to be taken up early in the year. Among these are tax incentives for energy efficiency, renewable energy (small wind, CHP, fuel cells and geothermal heat pumps), nuclear energy, biodiesel, and alternative fuel transportation fuels like propane and compressed natural gas. Energy tax extenders traditionally enjoy more support in the Senate than in the House, but generally receive bipartisan support.

**OTHER BILLS.** We also anticipate a number of smaller measures will move on their own or as part of a larger package of legislation. Included among these are efforts to restore and rebuild Puerto Rico's energy grid destroyed by Hurricane Maria, several bills to advance small hydropower projects, or efforts to develop policies to encourage more sustainable use of energy resources such as from lube oil. Legislation on restarting the process for identifying a long-term repository for nuclear waste is a possibility, but likely not until after the election as this could complicate the Senate race this fall in Nevada.

**REGULATORY ACTIVITIES.** Of far greater significance will be activity at the agencies to streamline or reform major energy sector business opportunities. Foremost among these is the effort to undo the Obama EPA's **Clean Power Plan (CPP)**, the implementation of which has been stayed following to a 2016 Supreme Court ruling. In October 2017, Administrator Pruitt issued a notice of proposed rulemaking to undo (or at least redo) the rules on the grounds that they go beyond the EPA's authority under the Clean Air Act. That rulemaking process will take time but utilities are under no obligation now to implement the rules originally promulgated until and if the stay is lifted. This has led to long-term uncertainty and some in the power generation industry are pushing for action to replace the CPP.

Another major regulatory effort will be to fashion new regulations dealing with how EPA and the U.S. Army Corps of Engineers regulate discharges into the waters of the United States (**WOTUS**). In November, the agencies announced that they would further delay the effective date of the rules by two years to allow time to rewrite the rules.

The Administration is also working to rewrite federal regulations and policies relating to **methane emission at crude oil and natural gas productions facilities, the designation of National Monuments and other protected areas, implementation of the Endangered Species Act, mitigation policies affecting Federally permitted projects, forest management in National Forests and other protected areas, and hydraulic fracturing on Federal and Indian Lands.** We expect these efforts to continue with the goal of easing Federal use restriction and streamlining private sector development, likely with support from Congress but with a great deal of litigation brought by blue state Governors and agencies or by the environmental community seeking to block the Administration's efforts.

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