

WHAT WOULD A BIDEN ADMINISTRATION MEAN FOR NEW YORK'S RENEWABLE ENERGY INDUSTRY?

Hodgson Russ Renewable Energy Alert
October 28, 2020

Americans have already voted en masse, and – hopefully – will know the identity of their next president on November 3 or shortly thereafter. Currently, former Vice President Joe Biden appears to be leading in the polls. It is thus worth considering what a Biden administration might mean for solar, wind, energy storage, and other renewable projects here in New York.

In New York, as in many other states, most renewable energy development is driven in large part by state-level policies and economics. Distributed solar and energy storage resources earn value through the Public Service Commission's Value of Distributed Energy Resource (VDER) utility tariff and net metering retail rates. Utility-scale projects participate in the federally-regulated wholesale markets, but also count on revenues from renewable energy credits purchased by the New York State Energy Research and Development Authority (NYSERDA). And state and local authorities set property, sales and other taxes, which can either green- or red-light a project. But the federal overlay of investment and production tax credits, permitting for certain projects, wholesale energy and capacity market rules and other policies can either be a strong tailwind for these markets or an impediment that drives up costs and imposes uncertainty in investment decisions.

Below we've highlighted five key federal policies for New York stakeholders to watch for in a Biden administration:

1. Investment Tax Credit and Production Tax Credits

Reforming and/or extending tax credits for solar, wind, and energy storage systems could be a part of the Biden administration's clean energy plan. Tax credits have been integral to the financing of solar and wind energy projects in New York and elsewhere, but they are set to decline or expire in the coming years.

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Solar energy systems are currently eligible for a 26 percent federal investment tax credit (ITC) which can be claimed against the tax liability of investors in solar energy property. The credit represents a dollar-for-dollar reduction in the income taxes that a person or company would otherwise pay the federal government. Energy storage systems that are co-located with the solar PV systems on are charged with energy from the solar PV are also eligible.

Onshore wind energy systems may alternately receive a production tax credit (PTC) of 1¢–2¢ per kilowatt-hour for the first 10 years of electricity generation for utility-scale wind. In December 2019, Congress passed an extension of the PTC, which will expire this year.

A Biden administration could also make the ITC available for standalone storage systems – a policy that currently enjoys significant bipartisan support – as well as extending the PTC and ITC for wind and solar.

2. Goodbye Buyer-Side Mitigation!

Utility scale solar, wind, and energy storage projects participate in the New York Independent Service Operator (NYISO)-administered wholesale energy, capacity, and ancillary service markets. The Federal Energy Regulatory Commission (FERC) oversees NYISO and approves its tariff provisions. Under the Trump administration, FERC has expanded the use of buyer side mitigation measures in NYISO, over the strenuous objections of New York regulators, renewable energy advocates, and the Democrat-appointed member(s) of the FERC. Buyer-side mitigation measures subject new state-supported resources in certain zones in the Lower Hudson Valley and New York City to a minimum offer floor. This offer floor is often higher than the market-clearing price resulting in the exclusion of state-supported resources from the capacity market. Because renewable energy projects receive state support in the form of renewable energy credits or other deployment incentives, buyer side mitigation functions to shut out these resources from the capacity market. The lack of capacity market revenues make renewable energy projects more expensive to build and operate.

The result is a lose-lose for New York's electricity consumers – they pay higher capacity costs because renewables are allowed to bid down capacity prices and higher amounts for RECs which compensate for lost-capacity revenue. On the developer side, this dynamic has dampened interest in developing renewable energy resources downstate, particularly energy storage resources for whom wholesale capacity markets are a key source of revenue. In response, New York's Public Service Commission has launched a proceeding to determine whether it needs to assert greater control over resource adequacy to achieve the state's decarbonization goals while enhancing in-state reliability.

A new, Democratic-led composition at FERC could dispense with buyer-side mitigation, or limit it to resources that present a true threat of exercising market power on behalf of capacity purchasers. Such a change would bring FERC policy more in harmony with New York State clean energy policy goals, which among other things call for 70 percent renewable energy by 2030.

However, even if Biden wins the presidency, FERC may not have a democratic majority until the latter half of 2021. Currently, FERC is comprised of two Republican commissioners (Chairman Neil Chatterjee & Commissioner James Danly) and one Democrat (Commissioner Richard Glick). President Trump has nominated Democrat Allison Clements and Republican Mark Christie. If these nominees are confirmed during the lame-duck session, Republicans would enjoy a 3-2 majority at FERC until June 30, 2021, when Chairman Chatterjee's term would end.

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3. A NYISO Carbon Price?

For several years, NYISO has been developing a proposal to “incorporate the social cost of carbon emissions into the NYISO-administered wholesale energy markets using a carbon price in dollars per ton of carbon dioxide emissions.” Following its most recent proposal, the NYISO commissioned a study by the Analysis Group, which found that a carbon price in the NYISO markets “can help deliver New York’s clean energy transition in faster, cheaper, more reliable, more efficient, and more creative ways.”

NYISO has not submitted proposed tariff revisions to FERC, but there appears to be growing momentum for carbon pricing generally at the federal level. FERC convened a Technical Conference regarding Carbon Pricing in Organized Wholesale Electricity Markets on September 30, 2020, in which many of the panelists agreed that a carbon pricing mechanism was not only legal under the Federal Power Act, but a desirable policy that RTOs should seriously consider.

FERC under the Biden administration may mean a greater likelihood that carbon pricing would be implemented in a manner consistent with State policy in the NYISO.

4. Streamlining Offshore Wind Permitting and Leasing

An impediment for the Atlantic coast offshore wind industry has been the unexpected delays at the Bureau of Ocean Energy Management (BOEM), the agency within the U.S. Department of the Interior that oversees project leasing and permitting in federal waters, both in approving construction and operation plans but also issuing more lease areas in which projects can be built.

BOEM sent shockwaves through the industry in August 2019 when it delayed the final environmental impact statement for Vineyard Wind – the \$2.8 billion, 800-megawatt offshore wind project off the coast of Massachusetts – in order to study the broader impacts of other planned offshore wind projects in the area. The FEIS, which was originally expected in July 2019, has yet to be issued, and has caused Vineyard Wind to delay its commercial operation date beyond 2022, as previously promised. Furthermore, New York submitted additional offshore wind lease “areas for consideration” in September, 2017, and more than three years later BOEM has yet to finalize consideration of those areas for auction.

A Biden administration will likely prioritize expediting federal approvals for offshore wind projects, including potentially staffing up at BOEM, and give greater regulatory certainty to a burgeoning, potential \$70 billion dollar industry.

5. National Clean Energy Standard

One of the most touted potential clean energy policies, a national “clean energy standard,” would build on the renewable portfolio and clean energy standards at the state level and set a standard for the nation as a whole. The Clean Energy Standard of Act of 2019, sponsored by Senator Tina Smith, provides one such model for legislation that would set a national market-oriented standard for clean electric energy generation.

Among other things, the bill directs the DOE Secretary to set a baseline for behind-the-meter consumption and establish a methodology for determining the amount of clean energy every retail electricity supplier in the country will be required to sell. The supplier would receive federal clean energy credits, which would be tracked through national generation attribute

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tracking system. “Clean energy” would include nuclear energy, certain biomass facilities, as well as the usual renewable energy suspects – solar, wind, hydropower, and the like.

Since New York already has one of the most progressive clean energy standards in the nation, it is unclear how much additional impact a national CES would have within New York. However, it could create export markets for New York generation to Pennsylvania and other states lacking aggressive renewable portfolio standards. This could be especially true for biomass facilities and other technologies that are currently excluded from New York's CES.

Stay tuned to the election results – as we are sure you will – for whether these significant, market-moving measures will have a place in the next administration, or not.

To learn more about how changes in federal policy could influence New York State's renewable energy market, please contact Noah Shaw (518.736.2924), or Peter Ross (646.218.7528), attorneys in the Hodgson Russ's Renewable Energy Practice.

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