

Sweeping Energy and Infrastructure Provisions and Incentives in COVID-19 Relief Bill Signal Important Changes Coming in 2021

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On December 27, 2020, President Trump signed into law a massive omnibus appropriations and \$900 billion COVID-19 relief bill (the “COVID-19 Relief Bill”). This post explores the implications of the COVID-19 Relief Bill for energy and infrastructure market participants and investors.

Key Sections of the COVID-19 Relief Bill

Three key sections of the bill are significant:

- Division Z, the Energy Act of 2020 (the “Energy Act of 2020”), a bipartisan energy package that represents the first substantial update to U.S. energy policy in 13 years.
- Division R, the Protecting Our Infrastructure of Pipelines and Enhancing Safety Act of 2020 (or “PIPES Act of 2020”), which contains numerous regulatory changes impacting large-scale liquefied natural gas (“LNG”) facilities, gas gathering pipelines and gas distribution facilities.
- Division EE, the Taxpayer Certainty and Disaster Relief Act of 2020, which includes major extensions of tax incentives for renewable energy (described in our December 22 [blog post](#)).

This post will focus on portions of the Energy Act of 2020 and the PIPES Act of

2020 that have the most potential to impact energy and infrastructure market participants and investors.

Energy Act of 2020

The Energy Act of 2020, which includes parts or all of 37 different Senate bills (including 29 that were bipartisan), spans 533 pages and 11 titles. This bipartisan, bicameral law is being touted as the first comprehensive national energy policy update since the Energy Independence and Security Act of 2007. It includes numerous measures a key Senate committee included in the American Energy Innovation Act of 2020 (described in our March 9 [blog post](#)) and the House included in the Clean Economy Jobs and Innovation Act (described in our October 12 [blog post](#)) earlier this year, neither of which was ultimately signed into law. The Senate Committee on Energy and Natural Resources posted a [section-by-section summary](#) of the Energy Act of 2020, which provides a helpful breakdown of the law.

Principally, the Energy Act of 2020 establishes or reauthorizes various programs intended to facilitate innovations and breakthroughs in renewable and clean energy technologies, authorizing \$35 billion in spending on a range of clean energy research, development, and related programs over the next five years. Highlighted below are some of the key provisions:

Title I – Energy Efficiency

This title contains many technology-oriented and technology-neutral measures to improve energy efficiency. Among the most notable measures, Sections 1005 and 1006 direct the Secretary of Energy to establish rebate programs to encourage the replacement of energy inefficient electric motors and transformers. Section 1011 reauthorizes the Weatherization Assistance Program (“WAP”) through fiscal year 2025, and amends the Energy Policy and Conservation Act (“EPCA”) to clarify that renewable energy technologies and other advanced technologies are included in the definition of weatherization materials, and make technical training grants available to private contractors that provide weatherization assistance. It also adds a new section to the EPCA to establish a competitive grant program within WAP for new and innovative weatherization services. The title does not include provisions regarding building codes.

Title II – Nuclear Energy

This title contains a number of measures designed to accelerate the development of improved, clean and scalable advanced nuclear reactors. Section 2001 requires the Secretary of Energy to establish a program to support the availability of high-assay low-enriched uranium ("HA-LEU") for civilian domestic research, development, demonstration ("RDD") and commercial use. As such fuel is not currently available on the commercial market, its availability would allow reactor vendors to move forward with reactor designs that are more compact and energy-dense and that generate smaller quantities of irradiated fuel during operations. The Nuclear Regulatory Commission also must submit a report to Congress that identifies updates to regulations, certifications and other policies necessary for HA-LEU to be made commercially available.

Section 2003 reauthorizes Department of Energy ("DOE") nuclear energy RDD and commercial application ("CA") activities, including advanced fuel, research and development for advanced reactors, used fuel technologies, and integration of nuclear energy systems for both existing plants and advanced nuclear concepts. It also authorizes an advanced reactor demonstration program, funding for the versatile test reactor, educational programs and an international coordination effort.

Title III – Renewable Energy and Storage

This title includes measures designed to spur substantial investments in a wide spectrum of renewable energy resources. Sections 3001-3004 authorize or reauthorize a number of DOE RDD&CA activities, including those relating to marine energy and hydropower, geothermal energy, wind energy (including onshore, offshore and distributed energy systems) and solar energy. In welcome news to owners of hydropower facilities, Section 3005 extends the incentives for hydroelectric production and efficiency authorized in the Energy Policy Act of 2005 through fiscal year 2036 and expands support to include small hydropower facilities (less than 20 megawatts) in areas with inadequate electric service.

Subtitle B of the title contains various measures designed to facilitate permitting for solar, wind and geothermal projects on federal lands. Sections 3101 and 3102 require the Secretary of the Interior to establish a program to improve permitting

for such projects and give the Secretary the flexibility to reduce acreage rental rates, capacity fees and other recurring annual fees for such projects. In addition, under Section 3104, the Secretary of the Interior must set national goals for wind, solar and geothermal energy production on federal land by no later than September 1, 2022, and must seek to issue permits that authorize no less than 25 gigawatts of electricity from wind, solar, and geothermal energy by 2025. This provision signals Congressional support for the increased use of federal land to host renewable energy facilities.

The Energy Act of 2020 authorizes \$1 billion over five years for federal innovation investments in energy storage technology and RDD. Under Section 3201, several new programs will be established for energy storage, including an RDD program to advance energy storage technologies, a competitive pilot project grant program and a long-term demonstration initiative, as well as an energy storage materials recycling R&D program. The RDD programs will apply to all energy storage technologies, including vehicle-to-grid systems, power-to-gas storage that includes hydrogen and synthetic natural gas storage, and building systems. Section 3201 establishes an energy storage and microgrid grant and technical assistance program at DOE for rural electric cooperatives and public utilities to assist with designing and demonstrating energy storage and microgrid projects that use energy from renewable energy resources.

Titles IV and V – Carbon Management and Carbon Removal

The Carbon Management and Carbon Removal titles include measures designed to foster innovation and breakthroughs needed to reduce the cost barriers to large-scale implementation and achieve economy-wide deployment of carbon capture, utilization, and storage (“CCUS”). Under Sections 4002-4005, a number of new RDD programs will be established, including for carbon storage, large-scale carbon sequestration, integrated storage, carbon utilization and high-efficiency turbines. Section 4007 requires the Secretary of Energy to conduct a study to examine opportunities for research and development in integrating blue hydrogen technology (i.e., hydrogen produced from natural gas via steam methane reformation where the carbon dioxide emissions are captured and stored) in the industrial power sector, and how that could further enhance the deployment and adoption of carbon capture and storage.

With respect to carbon removal, Section 5001 establishes an RDD program to test, validate or improve the technologies and strategies for large-scale removal of carbon dioxide from the atmosphere, and requires the Secretary of Energy to award prizes to pre-commercial and commercial air capture projects. Under Section 5002, the Secretary of Energy must prepare a report identifying tools the federal government can use to advance deployment of carbon dioxide removal projects. A new Carbon Dioxide Removal Task Force will be formed to advise the Secretary of Energy on matters pertaining to carbon dioxide removal and identify barriers to the advancement of carbon dioxide removal projects and tools for advancing and deploying such projects.

Title VIII – Grid Modernization

This title contains a number of provisions designed to accelerate modernization of the electric grid. Sections 8003 and 8004 authorize RDD programs to develop cost-effective integrated energy systems for a variety of purposes and incorporating a variety of technologies, and DOE RDD activities on integrating renewable energy and electric vehicles onto the electric grid. Under Section 8007, the Secretary of Energy must establish a grant program to carry out projects related to modernization of the electric grid, including for distribution system technologies.

There also are provisions designed to promote development of microgrids and to study challenges facing net metering. Specifically, Section 8011 requires the Secretary of Energy to establish a program to promote development of micro-grid systems to increase critical infrastructure resiliency and integrated microgrid systems – microgrid systems that comprise generation from both conventional and renewable energy systems – for isolated communities. Under Section 8015, the National Academies will conduct an evaluation of the current challenges associated with net metering and report on new and alternative technologies to improve net metering, and produce a publicly available report describing the results of its study and evaluation.

Titles IX – Department of Energy Innovation

The Department of Energy Innovation title includes a number of reforms designed to improve the Department of Energy. Section 9001 establishes a new office – the Office of Energy Technology Transitions – the mission of which will be to expand

the commercial impact of the research investments of DOE and to focus on commercializing technologies that advance the missions of DOE. The office will be headed by a Chief Commercialization Officer that will report to the Secretary of Energy and who must meet certain goals, including the reduction of greenhouse gas emissions and other pollutants. Section 9010 amends the Energy Policy Act of 2005 to defer collection of fees and other expenses from applicants for DOE loans until financial closing, and expands project eligibility to include additional technologies (including energy storage technologies for residential, industrial, transportation and power generation applications).

PIPES Act of 2020

The PIPES Act of 2020 addresses the safety of certain gas pipeline, gathering, distribution and LNG facilities by directing the Secretary of Transportation to update or promulgate regulations that impact these facilities. As a result, the impact of this section will be felt in coming months and years, as the Secretary develops these new regulations. The Democratic members of the House Committee on Transportation and Infrastructure prepared a [high-level summary](#), which provides a helpful overview of key provisions.

Section 110 of the PIPES Act of 2020 requires the Secretary of Transportation to update the minimum operating and maintenance standards applicable to large-scale LNG facilities (other than peak shaving facilities) within three years. Operators of large-scale LNG facilities will be required to submit a plan for implementation of these requirements, and will be subject to civil penalties of up to \$200,000 per violation for violations of the standards.

With respect to gas gathering pipelines, Section 112 provides that within 90 days of enactment the Secretary of Transportation must issue a final rule governing the safety of such lines, many of which are not currently regulated. Section 112 also requires a study to be conducted regarding the ability of operators to map such lines.

To address and reduce methane emissions from gas pipelines, Section 113 requires that the Secretary of Transportation promulgate final regulations that require operators of new and existing gas transmission and distribution pipelines, and certain regulated gathering pipelines, to conduct leak detection and repair programs to meet the need for gas pipeline safety and to protect the environment.

Under Section 109, the Secretary of Transportation also must promulgate regulations prescribing the applicability of the pipeline safety requirements to idled natural or other gas transmission and hazardous liquids pipelines. A number of idled pipelines across the country will be impacted by this rulemaking.

Title II of the PIPES Act of 2020, also referred to as the Leonel Rondon Pipeline Safety Act, requires the Secretary of Transportation to promulgate regulations that ensure that each distribution integrity management plan (“DIMP”) developed by a distribution system operator includes an evaluation of certain risks, including those resulting from the presence of cast iron pipes and mains. No later than two years after the regulations are promulgated, and not less frequently than once every five years thereafter, the Secretary of Transportation or relevant state authority must review each operator’s DIMP, emergency response plan, and the procedural manual for operations, maintenance, and emergencies.

How Will This Impact the Biden Administration?

President-Elect Biden on December 19, 2020, announced many of his top energy, environment and climate nominees and appointees: for Interior Secretary, Rep. Deb Haaland (N.M.); for Energy Secretary, Jennifer Granholm; for EPA Administrator, Michael Regan; for Council on Environmental Quality Chairwoman, Brenda Mallory; for national climate adviser, Gina McCarthy; and for deputy national climate adviser, Ali Zaidi. Biden declared that his “tested, trailblazing team will be ready on day one to confront the [climate crisis],” promote a clean energy economy, create new jobs, and deliver environmental justice. All proposed team members (except for McCarthy and Zaidi) will need to be confirmed by the Senate.

We expect the Biden administration will use a “whole-of-government” approach and quickly employ the full range of tools and levers available to achieve many of its stated energy, environment and climate goals including: net-zero carbon emissions for the power sector by 2035 and economy-wide by 2050; more clean energy resources and infrastructure on federal lands, waters and elsewhere; and advanced grid technology.

The Energy Act of 2020 can be viewed as a first step toward some of these goals. Further, it reflects the bipartisan nature of significant energy legislation over the past decades such as the Energy Policy Act of 1992, the Energy Policy Act of 2005 and the Energy Independence and Security Act of 2007. Regardless of whether

Republicans or Democrats control the Senate in 2021 after the Georgia Senate elections, there will be a razor-thin majority in the Senate, so bipartisan compromise likely will be necessary to pass any significant energy and climate legislation in the first year of the Biden administration.

Conclusion

The Energy Act of 2020 contained in the COVID-19 Relief Bill represents the first substantial energy policy update in over a decade. It includes substantial measures and incentives designed to ensure the increased development of renewable generation resources, and establishes or reauthorizes various programs designed to promote innovation and facilitate technological breakthroughs expected to facilitate the widespread deployment of energy storage, CCUS and advanced nuclear technology over time. Thus, the law is worthy of careful attention from energy and infrastructure market participants and investors. And because the regulatory updates required by the PIPES Act of 2020 could impose significant new regulatory obligations on the owners of certain existing fossil fuel infrastructure, owners, market participants and investors in the fossil fuel sector should be prepared to monitor and actively participate in the various required rulemakings that could affect their assets.

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