

Energy & Sustainability: What to Expect from the 117th Congress and the Biden Administration

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After what felt like one of the longest election seasons in history, Washington is preparing to welcome the incoming administration of President-elect Joe Biden and Vice President-elect Kamala Harris. Meanwhile, Capitol Hill adjusts to a dramatic shift in power as Democrats achieved an election night stunner by winning both Senate run-off elections in Georgia on January 5, sending Rev. Raphael Warnock and Jon Ossoff to Washington and giving Democrats a 50-seat majority with the new incoming vice president casting any tie votes. In the House of Representatives, Republicans narrowed the Democrats' majority in November but are still in the minority and Rep. Nancy Pelosi (D-CA) has been reelected to serve as Speaker of the House.

What does this all mean for energy and sustainability?

Biden-Harris Presidential Transition

In the most immediate sense, the path has been cleared for the president-elect's cabinet nominees. President-elect Biden has continued to round out his energy, environment, and climate teams, naming cabinet-level nominees as well as other roles that do not require confirmation by the U.S. Senate.

- **Jennifer Granholm**: The former governor of Michigan, has been nominated to serve as **Secretary of Energy**.
- **Michael Regan**: The Secretary of the North Carolina Department of Environmental Quality, has been nominated to serve as **Administrator of the Environmental Protection Agency**.
- **Rep. Deb Haaland (D-NM)**: The congresswoman, just elected to her second term in office, has been nominated to serve as **Secretary of the Interior**.
- **John Kerry**: The former senator and secretary of state, will serve as **Special Envoy for Climate** (a new post created by the President-elect).
- **Gina McCarthy**: The former Administrator of the EPA, will serve as the **White House National Climate Advisor** (a new post created by the President-elect).
- **Ali Zaidi**: Having served in the Obama Administration, he will now serve as **Deputy White House National Climate Advisor** (a new post created by the President-elect).
- **Brenda Mallory**: An environmental law expert, she will serve as **chair of the White House Council on Environmental Quality**.
- **Susan Rice**: The former National Security Advisor to President Obama will serve as **chair of the Domestic Policy Council**.

With Democrats holding the Senate majority, the president-elect's nominees will have a much easier time than they would have had if Republicans were in the majority, although outgoing Senate Majority Leader Mitch McConnell (R-KY) had previously pledged to bring all of the new president's nominees to the full Senate for consideration.

As we approach the January 20 inauguration, we will learn more about how President-elect Biden intends to fill additional posts and we anticipate that we will know many of these new senior government officials.

Biden Agenda for Energy, Energy Efficiency, and Climate

- **Paris Climate Agreement**: The president-elect has routinely stated that on "day one" of his administration he will have the U.S. rejoin the Paris Climate Agreement. In addition to rejoining the Paris Climate Agreement, the vice president has said that during his first 100 days in office, he will "convene a climate world summit to directly engage the leaders of the major greenhouse gas-emitting nations of the world to persuade them to join the United States in making more ambitious national pledges, above and beyond the commitments they have already made." To rejoin the Paris Agreement, the new president simply needs to inform in writing the United Nations of his intent. There is some discussion among conservatives of a last-minute ploy to block Mr. Biden on this effort, by asking President Trump, in his final days in office, to submit the Paris Agreement to the Senate as a treaty requiring ratification in a two-thirds vote.
- **Economy-wide net zero emissions by 2050**: The president-elect has said he will seek, in his first year in office, legislation that, by the end of his first term, puts the U.S. on an irreversible path to achieve economy-wide net-zero emissions no later than 2050. While Democrats control both chambers of Congress, the new president will have to thread the needle on this given the razor-thin margins for the House and Senate Democratic majorities, but that is not so say it cannot be done.

- **Buildings efficiency:** The president-elect plans to set a target of reducing the carbon footprint of the U.S. building stock by 50% come 2035, creating incentives for deep retrofits that combine appliance electrification, efficiency, and on-site clean power generation.
- **Electric Vehicles:** Mr. Biden has also said he will work with governors and mayors to support the deployment of more than 500,000 new public charging outlets by the end of 2030. Although it was not enacted, a Senate bipartisan transportation bill in the previous congress included \$1 billion for EV charging so there is already some level of bipartisan support for this effort.
- **Fuel economy standards for vehicles:** Another “day one” promise from candidate Biden was to begin development of rigorous new fuel economy standards aimed at ensuring 100% of new sales for light- and medium-duty vehicles will be zero emissions and annual improvements for heavy-duty vehicles.
- **DOE loans:** Leftover and unused from the 2009 economic stimulus is \$40 billion in DOE loan authority. Some are calling for the new administration to simply change the language of the loan program to allow DOE to make a quick investment in new clean energy technologies like batteries and energy storage technology.
- **Banning new oil and gas leases on public lands:** As a candidate Mr. Biden made this pledge, but President Trump has been very actively locking in contracts in the final months of his term. There is also Democratic support for such leases from some governors. While the environmental and conservation communities will press hard for a fulfillment of Mr. Biden’s promise, this could prove difficult in the immediate future.
- **Carbon enforcement mechanism (i.e. carbon tax):** As part of his climate agenda, the president-elect has called for legislation that “establishes an enforcement mechanism” to curb harmful greenhouse gas emissions. Although as a candidate during the Democratic primaries Mr. Biden called for a price on carbon emissions, more recently his team has indicated what he supports is a combination of economic stimulus, investments in clean energy, as well as decarbonization standards on a sector-by-sector basis. Democrats in the House and Senate have separately released reports calling for a carbon tax, but there is Republican opposition. The concept does have some industry support.

Congressional Agenda

The year-end omnibus legislation in the 116th Congress included the first significant energy legislation in more than a decade. The energy package focused on energy storage; advanced nuclear; carbon capture, utilization and storage; carbon removal; renewable energy; critical minerals and materials; fusion; industrial technologies; smart manufacturing; and grid modernization, among other areas. It also reauthorizes ARPA-E and the Weatherization Assistance program, and includes a range of measures aimed at boosting energy efficiency and brings administrative reforms to improve the Department of Energy. The omnibus also either made permanent or extended a number of clean energy and energy efficiency tax provision.

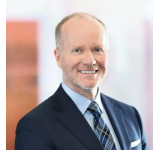
While the omnibus addressed many energy and sustainability policy and tax priorities, there will still be many more opportunities with the new Administration and the 117th Congress. This is especially true now that Democrats have taken the Senate majority and will almost certainly seek to pass a budget reconciliation bill which only needs a simple majority vote in the Senate versus the usual 60-vote threshold to advance legislation. Although a reconciliation bill cannot create new regulations, change existing regulations, create or instruct on new spending, it does provide significant leeway with regard to existing mandatory spending and tax policy.

Even with last year’s successful energy legislation, there will still be many opportunities in the 117th Congress:

- **House rules:** The rules package for the 117th Congress waives “pay as you go” (PAYGO) mandates for legislation “to prevent, prepare for, or respond to economic, environmental, or public health consequences resulting from climate change.” This was a key goal of the more progressive wing of the House Democratic caucus who will continue to push for the Green New Deal – or some variation of it.
- **Energy tax provisions:** While the 2020 year-end package discussed above made permanent or extended many energy and energy efficiency tax provisions, it did not include some provisions that have been long sought by stakeholders, including the option of direct payments in lieu of tax breaks. Another provision that could be pursued is an increase in the existing per-manufacturer cap for the all-electric and plug-in hybrid vehicle tax credit. There is some degree of bipartisan support for this increase.
- **Infrastructure:** Although “infrastructure week” has become a bit of an inside joke in Washington after many failed attempts to pass an infrastructure measure, the incoming administration is expected to make a strong push for a massive infrastructure bill as a part of economic recovery and that bill, likely paired with the surface transportation reauthorization, will potentially include grid modernization clean energy measures, and electric vehicles.
- **Regulations:** Following the late push by the Trump Administration to further the president’s regulatory agenda, the GA run-off victories make it much more likely that we will see the use of the Congressional Review Act (CRA) to undo many of the regulations approved during the last 60 congressional days. To cancel a rule, the CRA requires just a simple majority vote of both the Senate and the House of Representatives, and the agreement of the sitting President.

ML Strategies would welcome the opportunity to discuss how the shift in power in Washington will impact the energy and sustainability sectors.

Authors



R. Neal Martin, Senior Director of Government Relations

R. Neal Martin is a Senior Director of Government Relations at ML Strategies. He focuses on transportation, infrastructure, clean energy, trade, and federal appropriations, leveraging his many years of experience in government and government relations.