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BLOG POST

Post Election Update: Energy and Environment

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By: **Jeffrey R. Holmstead** and **Scott H. Segal**

Regardless of the final result, one thing is certain: the debate that took place in the 2012 election cycle over energy and environmental issues was a diametrically different debate that the one that took place just four years ago. Cap-and-trade legislation? Nowhere to be seen or heard. Climate change? See cap-and-trade. Shale gas development? A competition over who favors it more. Permits for offshore oil and gas development? A debate over who has or will get them out the door fastest. Perhaps nothing signified this stunning turn of events more than President Obama's campaign running pro-coal advertisements in Ohio that attacked Governor Romney for once saying that pollution from coal plants was dangerous to public health.

Now that the election is over and President Obama has been reelected, where does all of this rhetoric leave energy and environmental issues heading into a second Obama term? Below we examine the likely impacts on the major areas of energy and environmental policy.

Shale Gas Development

When President Obama, in his acceptance speech in Charlotte, pledged to create 600,000 new jobs related to natural gas production, it became clear that the only campaign debate over shale gas development would be over who could exploit it the most. Despite this campaign rhetoric, the Obama Administration has a number of federal regulatory actions relating to shale gas production pending before various agencies in his second term. For example, EPA has an ongoing study on the relationship between hydraulic fracturing and drinking water as well as soon-to-be-finalized guidance on the use of diesel fuel in the fracturing process. At DOI, BLM is readying the final version of its regulation on hydraulic fracturing occurring on Federal lands. Additionally, there are other regulatory actions, such as DOE's forthcoming policy on LNG exports to non-free trade agreement countries, that, while not directly controlling the drilling process, will nevertheless have a great impact on the market for future shale gas production. While it is unlikely that the Obama White House would approve any federal regulation that would drastically curtail shale gas production, many of these actions all have the potential to add significant burdens to the industry and raise the cost of production.

Offshore Oil and Gas

In the months leading up to the election, President Obama was keen to take credit for the overall increase in U.S. crude oil production that has taken place over the past few years, a talking point that proved useful in hitting back against charges that his administration had slowed the flow of offshore permit and plan approvals. Behind the scenes, however, output in federal waters of the Gulf of Mexico had dropped well below government projections of just a few years ago. The real determinants of tomorrow's offshore output boil down to whether the regulatory regime is viewed as transparent and predictable enough to invite investment, and the extent to which offshore leases are made available for potential exploration and production.

On the regulatory side, the Interior Department's permit and plan approval averages are mostly back to pre-Macondo levels, but the timing and outcome of approvals has become more clouded overall. BSEE's new enforcement arm will be beefed up and launched in earnest over the coming months, and a host of new regulations are also on the horizon, including (i) the Final Drilling Safety Rule, (ii) SEMS II, the Blowout Preventer Rule, (iii) the Production Safety Systems and Lifestyle Analysis Rule, (iv) a new Oil Spill Response Plan NTL, and (v) a total rewrite of 30 CFR 250 et. seq. As for leasing, the 2012-2017 plan failed to live up to industry expectations, sticking mostly to offerings in the Central and Western Gulf despite pleas to better exploit untapped resources along the nation's coastlines and in Alaska. The administration will write the first draft of the next five-year plan, with prospects for a bolder foray into controversial new areas slim to nil.

Climate Change

Not until the landfall of Hurricane Sandy, and the resulting media stories linking the storm to a more variable climate, did the issue of climate change remotely come up in the 2012 election cycle. To illustrate this point, not one question relating to climate change was even asked in any one of the three Presidential debates or in the Vice Presidential debate. With a down economy and with battleground states heavily reliant on fossil fuels, advocacy for any action to address climate change was simply a non-starter for both campaigns. Combine this with a split Congress and it appears unlikely that new comprehensive climate change legislation along the lines of the previous cap-and-trade bills will be enacted. However, it was notable that both President Obama and Senate Majority Leader Harry Reid, in their respective victory speeches, mentioned climate as a priority for them to tackle over the next four years. It is possible that there will be increasing attention paid to a potential carbon tax as part of a broad agreement on climate regulation. For that to happen, however, a carbon tax would have to be part of a climate "grand bargain" that would reduce or eliminate pending climate regulations.

On the regulatory front, you do have agency actions on climate that continue to be considered and compelled to final action by various consent decrees and court rulings. Of these regulations, the most important are the pending new source performance standards for greenhouse gas emissions from existing fossil fuel fired power plants and petroleum refineries. Both of these rules have been delayed over the past two years, largely due to the Obama Administration's fears of an election backlash. With a second term, and no reelection campaign, the Obama EPA will be free to release these rules albeit with likely significant congressional oversight by House Republicans and some Senate Democrats with coal and refinery interests in their regions.

Clean Energy Funding

Clean energy funding did get some airtime in the 2012 elections, however, it was not likely the messaging most favored by the renewables industry. Since its collapse into bankruptcy in 2011, Solyndra, the solar manufacturer that received a $535 million loan guarantee by the Obama DOE, has become a symbol of wasteful government spending, the failure of the Recovery Act to create the level of jobs expected, and the disastrous result of government picking winners and losers in the capital market. The Solyndra effect swept up not only the DOE Loan Guarantee Program but also the level of support generally given for new government programs to fund clean energy or energy efficiency technologies.

In the first Presidential debate, Governor Romney labeled such stimulus programs as "green pork" and derided the Obama Administration's record of failed investments. While President Obama did stress his continued support for the development of clean energy jobs, it was hardly full-throated and no specific new funding programs were pushed for a potential second Obama term. Instead, what we are likely to see is a focus on preserving tax incentives for renewable energy development as part of the tax reform discussions and the ongoing project management of the renewable energy projects that received funding in the first term. It is possible that the Obama White House will renew its press for a Clean Energy Standard in Congress, however, it is highly unlikely that such a plan will get through the House or even be able to get 60 votes in the Senate.