THE SUN ALSO RISES: CONGRESS VOTES TO STIMULATE THE RENEWABLE ENERGY, EFFICIENCY, CARBON CAPTURE, AND STORAGE INDUSTRIES

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Power Alert

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On 21 December 2020, the shortest day of the year in North America, the U.S. Congress passed a historic stimulus package. Among its more than 5000 pages, the bill includes important, if not quite historic, clean energy-related provisions ranging from new and extended tax incentives to government programs for research and development. Assuming the legislation becomes law, a new day for U.S. carbon capture, offshore wind, and many more renewable energy technologies may dawn.

RENEWABLE ENERGY TAX PROVISIONS

Many of the headline tax-related provisions are unsurprising (but still a nice holiday gift). The production tax credit would be extended by one year for electricity produced by wind, new open and closed biomass, hydropower, marine, and hydrokinetic energy electricity production facilities. In addition, the solar investment tax credit (ITC) will be extended at the 26% rate for two more years, reducing pressure for last-minute ITC safe-harbor deals that have not yet closed. The legislation also includes a much-needed tax incentive in the form of a 5-year 30% ITC for offshore wind facilities placed in service in inland navigable waters (think the Great Lakes) and U.S. coastal waters (which the Internal Revenue Service (IRS) will hopefully define more precisely in guidance). Notably, the offshore wind ITC is not subject to a sunset period, perhaps indicating that Congress may see fit to extend it when the time comes.

More surprisingly, the legislation also includes a new 30% ITC for waste-heat-to-energy facilities. This is different from the historically available cogeneration tax credit and will be available only in respect of 50MW or smaller facilities producing electricity from waste heat generated by buildings and equipment not chiefly used to produce electricity. The ITC will be available for facilities, the construction of which begins prior to 2024.

Less surprising--but very exciting for the budding carbon capture industry--Congress also extended the carbon capture income tax credit for two years. This extension very much makes up for the lengthy, ongoing process to issue regulations for this technologically complex industry with considerations that span several federal regulatory bodies. We understand that the IRS plans to release final regulations in Q1 of 2021, just in time to help developers whet increased investor appetite for carbon capture facility investments, especially in the emerging field of direct air capture.

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Finally, the legislation included welcome one-year extensions of the income tax and excise tax incentives related to alternative fuel refueling stations and alternative fuels (think hydrogen and electricity), qualified fuel cell motor vehicles (aka, hydrogen-fueled cars, buses, and trucks), two-wheeled plug-in electric vehicles, and certain energy-related non-business tax credits. In addition, the energy-efficient commercial buildings deduction was made permanent, although with heightened standards to qualify.

Notably absent, however, is a much-coveted income tax credit for energy storage that is not charged by renewable energy. The legislation also lacks a grant or similar program to at least temporarily replace the renewable energy income tax credits that so many American businesses do not need in a period of reduced profitability and, therefore, tax bills. Perhaps they will be on the Congressional menu in 2021 as the Biden administration prioritizes climate change and environmental policies.

THE ENERGY ACT OF 2020

The energy bill included in the stimulus package, i.e., the Energy Act of 2020, will be the most comprehensive energy legislation enacted in the last ten years. It includes a Carbon Management title containing several provisions to advance carbon capture, utilization, and sequestration (CCUS) technologies. These include authorization of a Carbon Capture Technology Program within DOE's Fossil Energy Office to manage the development of transformational technologies to reduce emissions in the fossil fuel industry, as well as manufacturing and industrial facilities using:

- Research and development;
- Large- and small-scale pilot projects and demonstrations; and
- A front-end engineering and design program.

Carbon capture demonstration projects authorized in the Energy Act will be chosen through a competitive process by the Department of Energy, who will enter into cooperative agreements with industry and other stakeholders for the construction and operation of six demonstration projects for carbon capture at coal electric generating facilities, natural gas electric generating facilities; and industrial facilities.

The bill also authorizes a carbon utilization research, development, and demonstration program to identify and assess novel uses of carbon and carbon oxides for commercial and industrial products and other products with market value.

A separate Carbon Removal Title would authorize federal investments in research, development, and deployment of technologies and strategies for removing carbon from the atmosphere at a large scale. For this program, the Secretary of Energy would be directed to work with the Secretary of Agriculture because of the potential for carbon capture using agricultural processes, e.g., through large-scale composting or biochar application, as well as prairie and forest management.

Technologies key to the energy transition also received a nod in the form of significant funding for research and development, including $1.5 billion for solar energy research, $625 million for wind (including offshore wind), and additional funding for research in advanced nuclear, hydropower, pumped hydro storage, geothermal, microgrids, and more. In addition, the bill includes the Better Energy Storage Technology (BEST) Act with $1 billion in competitive grant funding for energy storage technology research, development, and demonstration projects.

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ENERGY POLICY IN 2021

There is a global consensus building that economic stimulus in response to the pandemic's economic damage should also further climate goals (and that stimulating renewable energy and associated industries should stimulate the economy). Moreover, renewable energy, energy efficiency, climate change, climate security, carbon mitigation (and perhaps a carbon tax), and phasing out fossil fuels are all expected to be areas of focus of the Biden administration. The voice of active participants in these industries or industries that touch on these topics--yes, even to amplify the excellent work that many trade associations do--will be very important to help shape policy to address these pressing issues, triggering economic activity and job creation in the process. The engagement and input of industry participants with the Administration, Congress, and executive branch agencies will play a critical role in developing sound policies that will achieve desirable energy objectives and goals. These issues could be in play early in the New Year as part of another stimulus package or an infrastructure bill, both of which are at the top of the Democratic agenda in the new Congress.

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