

Future US energy policies

With the re-election of US President Barack Obama and preservation of the status quo in Congress in the 2012 elections, it will remain challenging for federal policymakers to advance major energy legislation to enactment over the next four years, write John LaMaster and Charlie Johnson, Partners, Akin Gump Strauss Hauer & Feld.

The Obama Administration is expected to continue to pursue energy and environmental policy through regulatory action – a scenario familiar to the oil and gas industry. The Administration and Congress will also continue to seek oil and gas sector input on future energy policy proposals, especially given the industry's substantial involvement in and contributions to the nation's economic recovery and energy independence.

However, with the Democrats retaining majority control of the Senate and Republicans of the House of Representatives in the 2012 election comes the possibility of ongoing legislative gridlock, especially on politically complex topics like energy and environmental policy. That said, both chambers of the 113th Congress are likely to be active on energy and environmental policy matters, as is the Obama Administration, which will continue to pursue regulatory action whether Congress acts or not.

President Obama has espoused an 'all of the above' strategy to develop multiple sources of energy in an attempt to reduce US dependence on foreign oil, and is likely to continue to use regulatory authority to advance energy and environmental policies in the absence of Congressional action. We saw this during the last term, when the Administration promulgated greenhouse gas (GHG) regulations under the Clean Air Act and restructured Interior Department oversight of offshore oil and gas development, among other Executive Branch actions.

E&P regulations

Among the potential areas for future regulatory action is unconventional oil and gas development, particularly the hydraulic fracturing process. The Interior Department's Bureau of Land Management is expected to release new

rules in 2013 to regulate certain aspects of the drilling process on federal lands. Some believe that the Environmental Protection Agency (EPA) may seek to regulate the process under the Clean Water Act, although the EPA appears unlikely to pursue new rules prior to completing a study in 2014 on the potential environmental impacts of hydraulic fracturing. Meanwhile, hydraulic fracturing and directional drilling will continue to provide access to plentiful supplies of domestically-sourced, low-cost natural gas, upon which the electricity, industrial and transportation sectors are increasingly relying. These market forces are likely to continue to push ongoing development of shale resources regardless of the prospect of federal regulatory activity.

Another issue on the horizon is whether the Obama Administration will limit access to new areas of the US for oil and gas E&P. After the April 2010 Gulf of Mexico oil spill, the Administration halted plans to open up new acreage, including cancelling new lease sales off the east coast, urging oil and gas lease-holders to instead develop existing inventory, and recently publishing a plan to limit federal acreage in the western US for oil shale development. But this does not mean that access to new oil and gas development is being restricted across the board, as upcoming lease sales in the Gulf of Mexico and development planned in the Alaska offshore region should mean that exploration and development in those areas will continue to increase. Moreover, the fate of the Keystone XL pipeline may also be resolved early in President Obama's second term, propelled in part by the selection of an alternative pipeline route.

The Obama Administration will continue to pursue an environmental strategy of reducing GHG emissions, albeit under new leadership, with Lisa



Jackson recently announcing her departure as Administrator of the EPA. This agenda is likely to continue to be advantageous to natural gas as the fossil fuel with a lower carbon emissions profile. In fact, going forward, it may be the increasing and widespread selection of natural gas as a fuel source and feedstock as much as federal regulation that sustains these economic trends.

Changing landscape

As reflected above, the future of the US energy landscape will continue to be influenced as much by market forces and technological advances as by the regulatory environment and results of the 2012 election. Advancing upstream technologies that have unlocked unconventional oil and gas resources have created cheap and plentiful supplies of oil and especially gas, resulting in lower energy prices, in turn giving US industry an increasing competitive advantage. Today, no industry seems as well positioned as the oil and gas sector to add jobs to the US economy and to drive the economic recovery.

These changes to the domestic oil and gas industry will also transform the worldwide energy picture, as the US moves closer to energy self-sufficiency, and North America possibly towards becoming a net exporter of oil and gas. As the US weans from its reliance on Middle Eastern oil, that oil will increasingly be diverted to meet growing demand in Asia – a change in worldwide energy flow that ultimately could have long-term geopolitical consequences.

These economic and geopolitical factors are well known to the Obama Administration and to the incoming Congress, both of which will continue to rely on the continued involvement of the oil and gas industry in furtherance of their energy and environmental policy objectives.