



## **Biden's Clean Energy Push Has Wind Industry Thinking Big**

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Law360 (February 10, 2021, 8:11 PM EST) -- The U.S. wind industry has gained a major cheerleader in the Biden administration, and insiders hope that early executive action paves the way for faster offshore and onshore wind energy development and the infrastructure needed to get new projects on the grid.

President Joe Biden's Jan. 27 executive order addressing climate change specifically calls for doubling U.S. offshore wind capacity by 2030 and encouraging additional renewable energy development on federal and tribal lands.

A week after the order was issued, the U.S. Department of the Interior's Bureau of Ocean Energy Management said it would resume the environmental review of the Vineyard Wind project off the Massachusetts coast, which is poised to be the first commercial-scale wind farm to be built in federal waters.

Industry watchers are confident that these actions are just a taste of things to come from the Biden administration and are eagerly awaiting further moves to accelerate wind project reviews and permitting, as well as infrastructure policy and spending that prioritizes electric transmission.

"We may not sleep for the next four, five years," said Norton Rose Fulbright partner Becky Diffen, who focuses on wind project development. "It's going to be busy."

Much of the initial excitement surrounds offshore wind projects, which are still struggling to gain traction in the U.S. Industry advocates say there are at least 10 proposed offshore wind projects behind Vineyard Wind awaiting Bureau of Ocean Energy Management review and approval of their construction and operation plans, and they hope the agency also moves forward on identifying additional offshore leasing areas and setting up future lease auctions.

"We really have to get these projects moving and have the lease sales finally move forward that have been pending for a while," said Laura Morton, who leads the offshore wind arm of the American Clean Power Association, a trade group.

Vineyard Wind's review hit a speed bump when the Trump administration decided to put together a supplemental environmental impact statement that examines the cumulative impacts of several proposed offshore wind projects along the Atlantic coast. That supplemental EIS, released in June, said the cumulative impacts could have major effects on commercial fishing but that other impacts were minimal.

A Bureau of Ocean Energy Management spokesperson told Law360 that not only will the cumulative review be rolled into the final EIS for the Vineyard Wind project, it may also be applied to environmental reviews of other proposed wind projects. The spokesperson cited the recently released draft EIS for the proposed South Fork wind project off New York's Long Island as an example.

"That sort of certainty coming out of Vineyard Wind being the precedent [construction and operation plan] and environmental impact statement, I think that's very helpful," said Cozen O'Connor LLP energy and environmental partner James Van Orden, who has worked on the proposed Ocean Wind project off New Jersey.

Onshore wind development is much further along than offshore, but that doesn't mean the industry isn't hoping for further action from the Biden administration on the land front. According to the DOI's Bureau of Land Management, there were approximately 3.3 gigawatts of wind power installed on public lands as of 2018, about half the amount of solar power installed on public lands.

"There's a lot of federal land up north, and states like Wyoming have peaks and ridges that are great for wind," said Husch Blackwell LLP partner Anna Kimbrell, who represents wind and solar developers.

But whether it's onshore or offshore wind, industry experts hope the push by the Biden administration to speed up project development is paired with an effort to build additional transmission lines.

Wind power "buyers need to be focused on the viability of the project," said Davis Wright Tremaine LLP energy partner Patrick Ferguson, who previously worked for a wind developer. "When you're layering on the need for long-haul transmission, that presents some concerns along the viability lines."

Diffen of Norton Rose expects a focus on transmission from both the Biden administration and the Democratic-controlled Congress.

"Any major infrastructure bill would hopefully have some transmission component to it," Diffen said.

The regulatory piece of the transmission equation is trickier. Individual states retain authority over siting, construction and permitting of projects, and to this point, the federal government has been hesitant to use its congressional authority as a backstop to site transmission projects if states don't act.

While the feds can certainly use their authority to shape how the grid is updated, the question is whether they can work with the states on planning, potential subsidies and direct investment to ensure those updates occur, Cozen O'Connor's Van Orden said.

As far as regulatory actions the feds could take on their own, the American Clean Power Association and other clean energy advocates on Tuesday urged recently minted Federal Energy Regulatory Commission Chairman Richard Glick to make offshore transmission planning a policy priority.

Experts say other potential actions could include FERC approving additional rate incentives for transmission projects and directing regional grid operators to clear the backlog of wind projects seeking to hook up to the grid.

"There is some hope that at least from a FERC perspective, the new chairman will help address grid inefficiencies," said Husch Blackwell partner Cacki Jewart, who works on renewable energy development.

The U.S. wind industry wasn't exactly foundering before Biden took office. Last year alone, even amid the COVID-19 pandemic, developers added a record 16.9 gigawatts of new generation capacity, according to an ACPA report.

What's more, the industry secured extensions of key federal tax credits in omnibus spending legislation signed in December, as well as a 30% investment tax credit for offshore wind projects.

Still, the cautious optimism of the past few years has been replaced with the expectation that the development floodgates will open, industry watchers say.

Even if the Biden administration doesn't craft a batch of new, wind-specific policies and programs, experts say it will create a regulatory environment that is more stable than the one during the Trump administration.

Experts cite an example of President Donald Trump's May executive order authorizing the government to block foreign equipment purchases that could pose a threat to the U.S. grid. Diffen said the order was

crafted so vaguely that many wind developers were left scratching their heads over how they would have to comply.

"There's certainty that you have an administration that's going to support renewables and make directives for agencies to prioritize renewables projects," Husch Blackwell's Kimbrell said of the Biden administration. "But there's also just the fact that it's just a smarter administration, in the sense that they really understand the intricacies and are going to make good law."