

Biden's Infrastructure Plan Is A Clean Energy Bonanza

By **Keith Goldberg**

Law360 (March 31, 2021, 7:47 PM EDT) -- President Joe Biden's \$2 trillion infrastructure plan unveiled Wednesday contains a potential gold mine for clean energy development, although congressional action will be necessary for the industry to reap most of the rewards.

Among the big-ticket items contained in Biden's American Jobs Plan are a national clean electricity standard, extensions and expansions of clean energy tax credits and hundreds of billions of dollars toward upgrading the electricity grid and increasing transportation electrification.

The plan also nods to the energy transition by spending billions to clean up abandoned coal mines and oil and gas wells, and pushing for the revocation of fossil fuel subsidies.

Most of the energy-related items will require legislation and funding from Congress, where Biden's fellow Democrats maintain a slim majority. Nevertheless, clean energy advocates are cheering the breadth and scope of the president's plan.

"The American Jobs Plan released today will move the clean energy sector beyond the endless cycles of temporary stopgap incentives toward a stable, long-term tax platform that will put millions of Americans back to work, upgrading our outdated grid and building a 21st century renewable energy economy," American Council on Renewable Energy President and CEO Gregory Wetstone said in a statement Wednesday.

Here's a rundown of several major energy-related items in Biden's plan:

A Tax Credit Turbocharge

Biden's plan calls for 10-year extensions of the federal production tax credit and investment tax credit, which have been huge boons for wind and solar projects, respectively. But the bigger news is a proposed expansion of energy tax credit policy, starting with making energy storage eligible for the ITC while creating a separate ITC for transmission projects aimed at coaxing at least 20 gigawatts worth of new high-voltage power lines.

Morgan Lewis & Bockius LLP energy development partner Jim Tynion said a transmission ITC would be a major incentive to build the transmission lines needed to get more renewable energy on the grid.

"Up until now, the independent power producer business stops where the power goes into the local

grid," Tynion said. "If we can expand that to the transmission lines that brings [power] to the load, that will be the catalyst."

Biden's plan also calls for adding a direct-pay option for the PTC and ITC that will essentially allow investors to receive their tax credits in a lump-sum rebate. Tynion said not only will that widen the pool of potential investors, it will also make small-scale projects like retail rooftop solar more attractive.

"What it will do is permit developers to build these projects without the dependence on the cash-constrained tax equity markets," Tynion said. "There will be a place for the tax equity bank investors ... but it will encourage new corporate investors who are doing this, and the owner-operators of projects themselves."

National Clean Electricity Standard

Few policies would be a bigger boon for clean energy project development than Biden's call for a national clean electricity standard that would require utilities to draw 100% of their power from zero-carbon sources by 2035.

But while it's one of the most ambitious planks of Biden's climate change and clean energy development platform, it's also one of his biggest legislative long shots.

Congressional Democrats included a "100% by 2035" clean electricity standard in their sweeping CLEAN Future Act in early March, but the legislation has little chance of making it through the Senate, even with Democrats in control.

Energy Department R&D and Grid Planning

In calling for hundreds of billions of dollars in clean energy research and development and transmission investment, Biden is envisioning a major role for the U.S. Department of Energy.

Biden's plan calls for additional funding for the DOE's Advanced Research Projects Agency-Energy program, known as ARPA-E, and creating a so-called ARPA-C program that would provide R&D support for new emissions reduction and climate change technologies.

Biden's plan also calls for the DOE to take a more muscular approach to grid planning through the creation of a Grid Development Authority that among other things, would explore how to use existing rights-of-way along roads and railways to build new transmission lines.

Experts say that using existing rights-of-way could be a way to sidestep state and local siting issues that have hobbled or sunk many long-range transmission projects.

Accelerating Electric Vehicle Development

Biden's plan calls for a \$174 billion investment in expanding the U.S. electric vehicle market. That includes things like electrifying the federal vehicle fleet and school buses, and offering additional rebates and tax incentives.

But the most significant infrastructure piece of Biden's plan calls for building a national network of 500,000 EV charging stations by 2030, through grants and incentive programs for state and local

governments as well as the private sector.

Tynion says that could lead to more rapid EV infrastructure buildout, rather than continuing to rely solely on local utilities that may have mismatched economic and regulatory priorities.

The [electric] distribution system is going to have more of load than it had before because of electric vehicles," Tynion said. "If this bill thinks holistically, then it will be a great boon."

Action on Fossil Fuels

Biden's plan calls for immediately spending \$16 billion to plug hundreds of thousands of orphaned oil and gas wells across the country, as well as restore and reclaim abandoned coal, uranium and hardrock mining sites.

Lauren Pagel, policy director at mining and drilling-focused environmental group Earthworks, welcomed the news, but said the \$16 billion "must only be a down payment," given the scale of cleanup needed.

"We need a comprehensive plan, with comprehensive funding, to manage the decline of fossil fuels and strengthen our outdated mining safeguards," Pagel said in a statement Wednesday.

Biden said he would also pursue changes to the federal tax code that would eliminate billions of dollars worth of subsidies and other perks for the fossil fuel industry. That's angered groups like the American Petroleum Institute, which insist the industry gets no special treatment.

"We will continue to advocate for a tax code that supports a level playing field for all economic sectors along with policies that sustain and grow the billions of dollars in government revenue that we help generate," API Senior Vice President Frank Macchiarola said in a statement Thursday.

--Editing by Orlando Lorenzo.