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Government Clean Tech

UPDATE

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Welcome to the first issue of Holland & Knight's Government Clean Tech Update, where we'll distill the most important clean tech updates and government-related market trends and developments from the past few months, and summarize what these developments mean for clean technology companies and investors.

Among the most significant developments during the third quarter of 2019 is a spate of hearings and legislative action around mitigating and adapting to climate change. This includes the introduction and passage through committee of the Senate's Fiscal Year (FY) 2020 Energy and Water Development Appropriations bill, which included a 17 percent increase over FY 2019 funding levels for clean tech programs, and 21 bills that address all aspects of the energy system and are further outlined below.

As this newsletter clearly demonstrates, action is happening in Washington – not only for today's solutions but in preparation for the 2020 election and the next Congress.

Key developments from around the government:

Congress

- On Sept 25, 2019, the Senate Energy and Natural Resources Committee continued to lay the groundwork for a potential comprehensive energy package in the coming months, advancing 21 bills that address all aspects of the energy system, from generation through transmission and consumption. The prospects for bipartisan energy legislation before the end of this Congress increased significantly when an array of the largest and most influential industry and environmental groups sent a letter to Senate leadership on Oct. 3, requesting that they put a package of energy bills to a vote on the Senate floor. These bills include:
 - the Better Energy Storage Technology Act, which would establish an energy storage research, development and deployment program at the U.S. Department of Energy,

among other provisions designed to boost domestic deployment of battery storage technologies

- the Clean Industrial Technology Act, which would address the lack of attention paid to reducing emissions from industrial processes
- the Energy Savings and Industrial Competitiveness Act, also known as Shaheen-Portman, which would improve energy efficiency across sectors
- Although the Senate Energy and Water Appropriations bill was passed out of committee unanimously, it has joined other legislation and appropriations bills in a holding pattern on the Senate floor. This likely will continue to be the case for the energy legislation; however, there is still cautious optimism that both chambers will be able to pass most, if not all, of their FY 2020 funding bills this year.
- **Key takeaway:** Comprehensive energy legislation may be unlikely this Congress, but congressional committees are preparing a legislative blueprint for 2020 or 2021. Meanwhile, the old adage that "there are three parties in Washington: Republicans, Democrats and Appropriators" is being tested but has proven true over the past few years.

White House

- The Office of Science and Technology Policy is beginning a push for an increased role for the U.S. Department of Energy (DOE) in coordination of economic development to address China's war on technology and assist with commercialization.
- President Donald Trump is working with Agriculture Secretary Sonny Perdue and Energy Secretary Rick Perry, as well as Administrator Andrew Wheeler of the U.S. Environmental Protection Agency (EPA), to craft a "grand bargain" that will attempt to satisfy all stakeholders in the Renewable Fuel Standard following the granting of an unprecedented number of small refiner exemptions in August. The primary beneficiaries are likely to be corn ethanol producers, but some benefits may redound to advanced and cellulosic biofuel companies as well.
- **Key takeaway:** The White House has largely ceded energy policymaking to Congress but is beginning more coordinated internal efforts on issues associated with clean technology development and deployment.

Department of Energy

- Reports have stated that Secretary Perry is planning to step down before the end of the year, to be replaced on an acting basis by current Deputy Secretary of Energy Dan Brouillette. Although Perry has denied those rumors, he has also been caught up in the House's ongoing impeachment inquiry focusing on the Trump Administration's interactions with Ukraine, which could accelerate any resignation timeline.
- On Sept. 6, 2019, Secretary Perry announced the formation of the Artificial Intelligence and Technology Office. Its mission is to "accelerate the delivery of AI-enabled capabilities, scale the department-wide development and impact of AI, and synchronize AI activities to advance the agency's core missions, expand partnerships, and support American AI leadership." DOE will tap the computing capabilities of the national labs for a number of cross-cutting applications, including nuclear security, materials science, grid resilience, transportation efficiency and more.
- In a transition of senior staff, John Sneed – formerly the executive director of the Loan Programs Office – has been named Secretary Perry's chief of staff. The previous chief, Brian McCormack, will be associate director for natural resources, energy and science at the White House's Office of Management and Budget.
- The DOE has awarded hundreds of millions of dollars in grants in recent months, including \$110 million for carbon capture, utilization and storage; \$56.5 million for advanced coal technologies; and \$15.2 for advanced nuclear technologies.

- The Office of Technology Transitions is promoting the expanded use of existing funding vehicles, including state funds, as well as cross-agency collaboration to augment the Technology Commercialization Fund.
- There is growing pressure from Congress to ensure that all programs, including the Loan Programs Office, operate as effectively and efficiently as possible.
- **Key takeaway:** Despite proposals to cut funding for clean tech programs in the president's annual budget request, Congress has provided more funding than ever before, and the department is operating better than anticipated due to continued and growing bipartisan support. It is not expected that Perry's resignation would significantly impact the current operation of the department, as both the political and career leadership below Perry are likely to remain in place through any transition.

Department of Defense

- At this year's Energy Exchange conference, which had more than 2,000 attendees in Denver, each of the service branches highlighted extensive projects in the energy space. Even though resilience and clean energy aren't as widely promoted as other efforts within the U.S. Department of Defense (DoD), that doesn't mean projects aren't moving forward.
- DoD innovative energy projects are utilizing a broad suite of contracting vehicles, including utility privatization and other transactions authority. These contracting vehicles are more flexible than those DoD has historically utilized, such as the DoD Power Purchase Agreement (PPA) authority, but these projects aren't broadly promoted in advance of the opportunity.
- Going forward, expect to see expanded efforts around utility privatization, as well as additional collaboration between DoD, clean energy developers and technology providers, defense contractors and utilities due to increased demand for resilience and more flexible contracting structures.
- **Key takeaway:** There are more contracting vehicles and opportunities available for energy resiliency deployment than in years past.

Committee on Foreign Investment in the United States (CFIUS)

- CFIUS, an interagency committee housed in the U.S. Department of the Treasury, evaluates the national security implications of foreign investments in U.S. companies or operations. CFIUS recently promulgated regulations to implement the Foreign Investment Risk Review Modernization Act of 2018, which could have significant implications for clean tech companies of all types and at all stages of development.
- The new regulations will require companies to file with CFIUS whenever a foreign government obtains a "substantial interest" in a U.S. business and in any transaction involving critical technology, which is likely to include energy infrastructure.
- **Key takeaway:** With CFIUS becoming more politicized and politically driven than it has traditionally been, companies should integrate their legal and political strategies to ensure they are charting the path of least resistance.

Opportunity Zones and New Markets Tax Credits

- The White House is continuing to support and promote Opportunity Zones for clean technology related projects, despite initial uncertainty.
- While Opportunity Zones are likely to be an attractive, credible solution for clean energy projects in the coming years, they may present challenges to those projects in the near term. In the interim, companies are encouraged to revisit the proven and successful New Markets Tax Credit for project development.

Conclusion and Considerations

There are a number of tools, programs and congressional initiatives underway in Washington that will directly or indirectly support clean tech. But to be successful, companies still need to engage and advocate. Funding and policy support don't happen in a vacuum. Even the best ideas require persistent, ongoing effort to become a reality.

For more information or assistance with a particular project, contact the authors.

About Our Energy and Natural Resources Industry Sector Group:

The energy and natural resources industries will play a significant role in shaping the future of the global economy, and they must continue their innovative efforts in timely and responsible ways. In order to keep up with competitors and meet their many challenges, companies in the field need to stay ahead of the curve and be prepared for new issues and challenges. Holland & Knight's [Energy and Natural Resources Industry Sector Group](#) consists of more than 80 experienced attorneys and professionals who work on all facets of transactional, regulatory, legislative and litigation matters related to energy and natural resources. In addition to our work with regulatory bodies such as the Federal Energy Regulatory Commission (FERC), we interface with the White House and key agencies such as the U.S. Environmental Protection Agency (EPA), Department of Energy, Department of Agriculture, Department of Defense and Department of the Interior. We understand the importance of tailoring regulatory strategies to meet the unique needs of a particular client and of accommodating existing and anticipated state and national regulation, technology and infrastructure.

About Our Public Policy & Regulation Group

Holland & Knight's [Public Policy & Regulation Group](#) uses its in-depth understanding of governmental operations and political perspectives to help advance our clients' strategic objectives and solve problems.

As advocates for our clients, we are committed to helping shape public policy decisions through careful, strategic positioning combined with a deep understanding of our clients' evolving needs. Our team offers depth, diversity and a bipartisan approach that adapts well to changes in the political climate.



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