

Energy, Climate Policy Chasm Divides Trump And Biden

By **Keith Goldberg**

Law360 (October 16, 2020, 6:15 PM EDT) -- The energy policy divide underpinning next month's presidential election couldn't be more stark, with President Donald Trump's commitment to fossil fuels and deregulation pitted against former Vice President Joe Biden's multitrillion-dollar vow to combat climate change.

In Trump's first term, he has consistently pushed policies to promote fossil fuel production and use while rolling back Obama-era climate regulations that cracked down on greenhouse gas emissions from power plants, vehicles and other sectors, and withdrew the U.S. from the Paris climate change accords.

Meanwhile, Biden has said the U.S. needs to achieve net-zero greenhouse gas emissions by 2050 and has proposed spending \$2 trillion on policies and investments that accelerate that process. He would also have the U.S. rejoin the Paris accords.

"You could not have two more diametrically opposed candidates on this issue," Ed Zaelke, who heads McDermott Will & Emery LLP's global energy project finance group, said.

Experts say the gulf between the candidates can be encapsulated in their approaches to the U.S. electricity and transportation sectors, the two largest sources of greenhouse gas emissions.

A central plank of Biden's platform is a national clean energy standard that calls for net-zero carbon from the electricity sector by 2035, which dovetails with plans to plow federal cash into zero-emission technologies including battery storage and advanced nuclear energy and to develop charging infrastructure for electric vehicles.

On the other hand, the Trump administration is currently defending in court its repeal and replacement of the Obama-era Clean Power Plan, which limits carbon emissions from power plants, and defending its relaxation of fuel economy standards that were seen as a path to more electric vehicles.

"It's the distinction on that issue, and the importance of accounting for carbon in the energy agenda, [that] drives the candidates' views on how they would approach energy and environmental issues in their respective administrations," said Crowell & Moring LLP counsel Tyler O'Connor, who focuses on energy litigation.

The candidates' divide on vehicle emissions is an especially compelling case study, said Akin Gump

Strauss Hauer & Feld LLP partner Jamie Tucker, a former Republican staffer on Capitol Hill. Not only does it epitomize Trump's general deregulatory efforts, but the revocation of California's ability to set its own, stricter vehicle emissions standards that other states have adopted and were part of the Obama-era rules highlights the candidates' disparate views on state and federal energy and climate authority, Tucker said.

"There is the push-and pull of what the proper role of states is in setting environmental and energy policy," Tucker said. "You've got air components to that fight, you've got fuel source [components] to that fight."

Trump has made increasing oil and gas development a priority, from rescinding methane regulations on oil and gas infrastructure, to opening additional federal lands to drilling, approving controversial pipelines such as the Keystone XL project and attempting to limit states' pipeline permitting authority.

In addition to his vehicle electrification push, Biden has said he won't approve new drilling permits on federal lands and waters and has proposed training workers to seal hundreds of thousands of abandoned oil and gas wells across the country.

Even where the candidates share some common ground, such as a commitment to infrastructure investment, their approaches are completely different, according to Holland & Knight LLP senior policy adviser Beth Viola.

Biden's plans call for the building and rebuilding of energy, water and other infrastructure that can withstand the impacts of climate change. Trump's actions have largely centered around speeding up the permitting and construction of pipelines and other large infrastructure projects, including the administration's recent revision of how agencies implement the National Environmental Policy Act in their project reviews and permitting.

"For him it's about energy dominance and taking advantage of the oil and gas situation the U.S.," said Viola, who served on the White House Council on Environmental Quality during Bill Clinton's administration. "For Vice President Biden ... he recognizes that climate is not just a threat, but also an opportunity to implement his ... plan that would help us grow the economy, create a lot of jobs and reduce CO2 over a very set period of time."

The gulf between the two candidates' energy policy platforms — and the ambition of Biden's plan — means that who controls the U.S. Senate following Election Day could be just as important as who sits in the White House, experts say.

"I think the constitution of the Senate is going to be a major factor if Vice President Biden will be able to enact parts of his agenda," O'Connor said. "Having a Democratic Senate would be much more amenable to passing large parts of his agenda than a Senate still controlled by the Republicans."

Regardless, Biden and Trump offer two vastly different potential environments for the energy industry to operate in and a Biden victory would bring a drastic shift toward combating climate change. But experts say the change would be more significant for companies who primarily operate in the U.S. than companies with global footprints that are more accustomed to grappling with regulatory environments that have made climate change a higher priority.

"It's not only the global regulatory environment, it's also the global view on the sources and causes of

climate change, and the transition to a recognition that there has to be sustainability," said Akin Gump partner Stacey Mitchell, a former EPA deputy general counsel. "A lot of companies are moving themselves toward investments in clean energy, irrespective of the regulatory framework."

--Editing by Emily Kokoll.

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