The Biden Administration Climate Policy and Climate Compensation Litigation in the US

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A New Era For US Climate Policy

• President Biden & his Administration recognize the “US & the world face a profound climate crisis”
• Ambitious plans at all levels of government
• Recommitted to the international effort
A New Era For US Climate Policy

• Climate a major focus of Biden campaign & Presidency
• Rejoined Paris Agreement on 1st day in office
• Recognize crisis & mobilize government to respond
• National Climate Advisor - new White House office to coordinate & implementing domestic climate agenda
A New Era For US Climate Policy

• Executive Order on Tackling the Climate Crisis at Home-and Abroad (Jan. 2021)
• Federal directive issued by President
• Establishes national policy & manages federal government operations
• Further legislative & agency action required
• GOAL: “Build a modern and sustainable infrastructure, deliver an equitable, clean energy future, and put the United States on a path to achieve net-zero emissions, economy-wide, by no later than 2050”
A New Era For US Climate Policy

• Executive Order commitments:
  • Center the Climate Crisis in U.S. Foreign Policy and National Security Considerations
  • US aims for a significant increase in global ambition (example: April summit on US NDC)
  • Whole-of-Government Approach
  • Set domestic policies & regain international credibility - before US political control shifts again
  • Build Back Better = major COVID economic recovery plan w/clean energy a central pillar
International Commitment (Apr. 2021)

- Target for US: 50-52% reduction from 2005 levels in economy-wide net GHG pollution in 2030
- 100% carbon pollution-free electricity by 2035
- Reduce carbon pollution from transportation, industrial & agricultural sectors
- Major challenge—but achievable, according to numerous analyses

FACT SHEET: President Biden Sets 2030 Greenhouse Gas Pollution Reduction Target Aimed at Creating Good-Paying Union Jobs and Securing U.S. Leadership on Clean Energy Technologies

EXECUTIVE SUMMARY: U.S. International Climate Finance Plan

US intends to double annual public climate finance to developing countries by 2024
Domestic Policies (national level)

- Action by Congress = national legislature
- Action by federal agencies such as EPA, FERC, NHTSA
- Addressing all major sectors of economy
- Some (not all!) actions discussed here
- (Actions at state and local levels = discussed later)
Domestic Policies (national level)

• Personnel actions = install climate leaders in new/revamped positions
Domestic Policies (national level)

- Legislative actions = major infrastructure & climate proposals = $2 trillion American Jobs Plan
- $400 billion for renewable energy = extend tax credits for 10 years, new energy efficiency & clean energy standards, require 100% carbon-free electricity by 2035
- $174 billion for EV adoption = build 500,000 charging stations & convert federal vehicle fleet
- $100 billion for power infrastructure = significant investments in transmission >> 20 GW goal for new long-distance transmission lines
Domestic Policies (national level)

- Agency actions = new policies to implement Biden agenda
- Example: FERC technical conference on electric vehicles, April 2021, focused on:
  - Upgrade transmission and distribution infrastructure that transports power >> revamp T planning process (Order 1000)
  - Address siting bottlenecks (DOE corridor process)
  - Deciding who should pay for new power lines and EV charging stations? ("energy justice")
Domestic Policies (national level)

- Agency actions = reverse harmful policies of Trump Administration = generally requires same process as making a rule in first place (can’t just “cancel” it)
- Example: vehicle emissions standards - NHTSA proposal to reverse harmful SAFE rule & reinstate states’ authority to set vehicle emissions standards (I discussed in 2019!)

Environment

U.S. moves to ax Trump rule banning California emission regulations

April 22, 2021: NHTSA Proposed to Repeal SAFE I Rule

In the CAFE Preemption Proposed Rule, issued today, NHTSA proposes withdrawing NHTSA’s regulations and legal analysis regarding preemption under The Energy Policy and Conservation Act. NHTSA is seeking comment on whether the SAFE I Rule, which was finalized in 2019, overstepped the Agency’s statutory authority by issuing regulations and announcing views that purported to impose broad preemption requirements. If finalized, the rule would wipe the regulatory slate clean.
Domestic Policies (national level)

- Agency actions = modify or reverse policies that hamper climate action
- Example: “Minimum Offer Price Rule” = accommodate more renewable energy in regional wholesale electricity markets

**FERC open to revisiting MOPR, as grid operators, utilities mull future of wholesale markets**

"Although I voted for our MOPR orders, and believe those determinations were supported by the record, I’m not wedded to the policy calls of the past," said Commissioner Neil Chatterjee.

**Things Looking Up for Renewable Resources at Federal Energy Regulatory Commission**
Domestic Policies (national level)

- Legislative actions = reverse agency actions from Trump Administration by legislation
- Allowed under Congressional Review Act = disapproval of federal agency rules, generally within 60 days
- Revisions to most Trump rules must go through agency process

US Senate votes to restore methane rules for oil and gas sector

Resolution would undo Trump-era rollback for potent greenhouse gas
Complex federal-state relationship (example: transmission siting)

Federal and state roles in interstate energy infrastructure permitting

The Federal Power Act and the Natural Gas Act define whether the Federal Energy Regulatory Commission or state public utility commissions are responsible for siting, authorizing and setting rates for projects.

Issue: federal siting process that overrides traditional state role?? (FPA 216/DOE “corridor” process)
Domestic Policies (State/local)

- States like California & Virginia have aggressive laws to force massive levels of new solar, wind, battery storage, demand side measures & electric vehicle programs
- Trend: requiring 100% renewable electricity in future (Virginia: 2045 for state’s utilities)
- My involvement: expert witness in first Virginia case on utility plans to build solar & wind capacity to comply (order on April 30, 2021)
National/state/local renewable energy policies

- New book on renewable energy support measures around the world
- Publication July 2021
- Examples chosen from nations around the world
- THANKS to Dr. Fehling for comments and support!!!
Climate compensation litigation in the US

- Courts emerging as a critical battleground in climate fight
- Dozens of new cases filed in US in 2020
- Of course, cases in Europe too (e.g., Urgenda)
Major types of cases in the US

• Force companies to account for damage they caused (e.g., *Baltimore v. BP*)
• Force governments to take more action on climate change (e.g., *Juliana*)
• Force consideration of climate change under existing laws (e.g., FERC/NEPA/pipelines; “upstream” & “downstream” impacts)
BP PLC v. Baltimore (2021)

- 2018: City of Baltimore sued oil & gas companies, seeks to hold them responsible for their role in climate change
- >20 similar suits by cities, states & counties in recent years
- Arguments such as misled public about threat burning oil and gas poses to the climate
- Technical point argued before US Supreme Court in January
- Decision expected soon
BP PLC v. Baltimore (2021)

• Baltimore argues companies continued to produce and sell fossil fuel products even though they knew it would lead to global warming
• Complaint alleges violations of state tort law = public nuisance and products liability
• City seeks compensatory & punitive damages

One type of damage: More rain due to climate change = overwhelmed stormwater system
• Cases can be powerful if finally argued on merits
• Deceptive marketing practices by companies that billed their products as safe = different from earlier arguments that companies caused emissions
  • That argument effectively lost in AEP v. Connecticut (2011)
• BUT: issue before Supreme Court is not the merits
• Instead: whether case must be tried in federal court
• Much more promising for Baltimore if stay in state court
• Decision expected by this June = long way from actually deciding how much compensation & to whom
THANK YOU ONCE AGAIN FOR HAVING ME!

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