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# What's New

**Keith Martin**

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The Biden administration will struggle to be consequential. There isn't the same feel in Washington as there was at the start of the Reagan, Clinton and Obama administrations. Trump will remain a constant thorn. The news media has an incentive to keep him in the news and to look for controversy.



It is useful to think in terms of two time periods. One is the lame-duck session of Congress that will start later this month and the other is next year.



The likelihood of another economic stimulus bill has been receding this week. There is a too great a gap between the \$2 trillion that Democrats want and the \$500 billion on offer from Senate Republicans. Congress must come back to fund the federal government past December 11. A tax extenders bill is possible to deal with 33 expiring tax breaks, but unlikely.

Trump?



Mitch McConnell has an incentive to do as much as possible before year end, but it is not an overwhelming incentive. He may not have an effective majority once Mark Kelly (D-AZ) replaces Martha McSally (R-AZ) after Thanksgiving.



The bigger question is what happens next year. If Congress passes a stimulus bill during the lame duck, that will leave Biden less room to maneuver. If there is no stimulus, then expect some form of economic relief measure between next February and June. New administrations must act quickly. By 2022, we will be back in election season. The party holding the White House tends to lose seats in Congress.

infrastructure bill?





The Georgia runoff election for two US Senate seats on January 5 is key. If Republicans win either seat, then the issue will be whether McConnell decides obstruction is the best path. Neither majority party in the House or Senate will have a strong hand.



McConnell will end up at best with a two-seat majority in the Senate, but unable to rely on three Republican Senators (Collins, Murkowski and Romney). Pelosi has only a 13-seat majority out of 435 members in the House, with 10 seats still uncalled, Republicans leading in 8 and a frustrated Democratic centrist caucus that may not fall into line.





Thus, the odds of gridlock are high. In the end, the election may have replaced the man at the top to try to set a better tone, but otherwise provided no public consensus for broader change.



Renewables will do fine no matter the outcome. Coal plant retirements are accelerating. Even the oil companies are now talking about the “energy transition.”

tipping point



There are two big winners within the renewables community no matter the outcome of the Georgia Senate races. One is offshore wind. Two things have been holding up construction in the Atlantic: a hold by BOEM on issuing any construction permits and a tax rule. Relief on both is in sight.



Solar is the other big winner. The solar industry has been working hard to get the ITC extended. An extension has a decent chance of getting into any economic stimulus bill next year.



It is harder to predict what Biden might do on solar tariffs. A US court decision just let Trump rescind a tariff exemption for bifacial solar panels. Biden may be able to head off a move that Trump launched in October to extend existing tariffs on imported solar panels past their scheduled expiration in February 2022.



Several other green tax proposals remain in the mix for possible action next year. Odds are best for a proposal to give offshore wind projects more time to start construction to qualify for tax credits and next for a tax credit for standalone storage. A “direct-pay” alternative to tax credits is less likely, and depends on the state of the tax equity market.

PTC extension





Biden is expected to take a series of executive actions to help renewables. They include increasing federal agency purchases of renewables and requiring more stringent SEC and bank regulatory disclosures of climate-change effects.



The replacement of Neil Chatterjee as FERC chairman in a fit of pique by Trump the day after the election has given Democrats an effective majority at FERC before Chatterjee's term ends in June. Biden can move the chairmanship to Rich Glick.



The Senate could take up a bill in the lame-duck session to ban imported goods from western China unless the importer has “clear and convincing evidence” that they are not made with forced labor from Uigher Muslims. The bill passed the House nearly unanimously in September.



The Trump administration is considering imposing countervailing duties on goods imported from Vietnam to offset alleged currency manipulation. Labor unions asked the US Trade Representative last week to impose an 8.4% duty.



Shipping costs to move goods from Asia to the US west coast are up 63.4% since a year ago as companies restock to prepare for the pandemic to worsen over the winter.



Trump has until January 15 to decide whether to impose tariffs on imported transformers and their components after Commerce wrapped up an investigation in October. Duties as high as 25% could be imposed on national security grounds. A deal reached earlier this month will exempt transformers made in Mexico. Vendors have been unwilling in most recent contracts to absorb the cost of new import duties.





The US Department of Energy missed a September 28 deadline to issue guidance on the Trump order. Developers signing equipment and construction contracts want covenants not to use banned equipment and a termination right. There has been a move away from some types of Chinese equipment.

personnel changes



The tax equity market has come back to life. Some tax equity investors are asking for protection against changes in tax law through the next Congress. Competition has resumed among banks. Invenergy has been in the market looking for construction debt at 75 basis points over LIBOR, according to trade reports.

\$15 billion



More than 3,400 companies have filed suit against the Trump administration to get back duties paid on Chinese products. HMTX Industries filed the first suit on September 10. The others are “me-too” suits to piggyback on whatever relief HMTX receives. The deadline has arguably expired to sue for refunds of duties paid on “list 3” Chinese products. The deadline for list 4 is August 20, 2021.



Be careful about buying equipment on a DDP (Incoterms) basis. If the vendor reimburses the US customer for duties, the US will collect the reimbursement as an additional duty.



A study by kWh Analytics in September suggests that output from US utility-scale solar projects is 6.3% short on average from P50 forecasts. The bottom quartile of projects fall more than 10% short.



A September FERC order involving Broadview Solar has many solar developers up in arms. The order will make it harder to land utility PPAs in places like Idaho and Montana that are not served by organized power markets and will complicate life for solar projects with batteries.

80 MW





October *Wall Street Journal* headline:

Zoom Frog Dissection Elicits Vomit Emojis



October *Tax Notes* headline:

Tax Crime Roundup: Acupuncture  
Business Owner's Plan Has Holes in It

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