Energy Industry COVID-19 Update

CARES Act Fails to Include Critical Extensions for Renewable Energy Tax Credits

By Paul O'Hop
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The Coronavirus Aid, Relief, and Economic Security Act – also known as the CARES Act – which was passed by US lawmakers on March 27, 2020, was the largest economic stimulus bill in modern history, more than doubling the stimulus act passed in the US in 2009 during the financial crisis. However, the bill does not include requested extensions of critical deadlines related to the solar investment tax credit (ITC) or the wind production tax credit (PTC). Both the American Wind Energy Association (AWEA) and the Solar Energy Industry Association (SEIA) have raised alarms that, without such extensions, their respective industries will face a near-term crisis. Many solar project developers face a mid-April deadline to take delivery of key equipment, in order to comply with the solar ITC's 5% safe-harbor provisions, and missing such deadline could jeopardize their eligibility for the full 30% ITC. Similarly, some wind project developers must complete their projects by the end of 2020 in order to qualify for the full PTC; however, interruptions in global supply chains puts those tax credits and projects at risk.

Energy and Phase 4 Stimulus Package

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Both Speaker Nancy Pelosi and President Trump have identified infrastructure as a priority for an anticipated Phase 4 coronavirus response package. As energy is vital to manufacturing and business investments, it is possible that a Phase 4 bill will address energy-related issues to support critical energy infrastructure. Speaker Pelosi has identified the energy grid as a main priority for the next stage of legislation. In addition, we anticipate there will likely be Phase 4 discussions around the Strategic Petroleum Reserve (SPR) and renewable energies. Possible strategies may include not only the US government purchasing oil and gas for the SPR (if such action is not taken administratively by the US Department of Energy in the coming days), but also a proposed monetization of renewable energy tax credits.

Some renewable advocates are asking Congress to allow companies to take direct payments from the Treasury in lieu of the existing tax credits, an approach that was used after the financial crisis a decade ago. They say such flexibility is needed as tax equity markets are drying up and blunting the effectiveness of existing credits used to finance wind farms and solar arrays. Other measures possibly providing relief to the renewable energy industry might include extensions of solar and wind tax credits, changes to safe harbor, and commencing construction provisions and related financial measures to alleviate tax equity tightening that is threatening the industry. We believe the aforementioned proposals offer more fertile ground for potential bipartisan consensus on renewable energy than the more aggressive and controversial "Green New Deal" measures advocated by some congressional Democrats, which Republicans view as non-starters.

It bears noting that, despite the enthusiasm expressed for a Phase 4 bill by President Trump and Speaker Pelosi, congressional Republican leaders, including Senate Majority Leader Mitch McConnell (R-KY), are urging a "go slow" approach, arguing that the Phase 3 legislation (the CARES Act) signed into law on Friday, March 27, 2020 – the largest economic package ever passed in the history of the US Congress – should be given time to work its way into the economy before conclusions are drawn about the need for and composition of a Phase 4.

Support for the energy industry in a possible Phase 4 might further be seen as a pressing need due to the fact that the Cybersecurity and Infrastructure Security Agency (CISA) at the Department of Homeland Security updated its Advisory Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19 Response to include energy workers "regardless of the energy source." The new guidelines specifically address the renewable energy industry and designate those workers and engineers as essential. While the CISA memorandum is advisory in nature, many states have adopted these guidelines to inform their mandatory non-essential business closures.

COVID-19 Impact on Offshore Wind Energy Industry

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Unpredictability has emerged as one of the few certainties of the COVID-19 crisis. Every industry has seen the effects of the pandemic, from hospitality, to travel, and even to the renewable energy sector. Indeed, even though the US offshore wind industry is still in early stages of development, the repercussions of market contraction, stay at home orders, economic stimulus efforts and the precipitous decrease in deal-making activity could have meaningful impacts on the fledgling market. Read full article here.

Force Majeure Claims Under Energy Contracts Due to COVID-19

By Hannah Zapfe
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As the energy industry faces the growing impact of COVID-19), questions arise about whether *force majeure* provisions may be invoked to delay performance or terminate contracts. *Force majeure* provisions, sometimes referred to as "Act of God" clauses, are commonly included in energy project contracts to relieve parties from performing their contractual obligations upon the occurrence of an event beyond their control. Washington DC-based associate Hannah Zapfe examines whether and when such clauses can be validly invoked in the face of COVID-19. Read full article here.

Responding to Disruptions in LNG Contracts Due to COVID-19

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The recent COVID-19 outbreak has added another layer of disruption to an already depressed LNG market in Southeast Asia. London-based lawyers Max Rockall and Tim Flamank take a closer look at the impact COVID-19 is having on LNG contracts. Read full article here.

Key Takeaways for the Energy industry From UK Stimulus Package in Response to COVID-19

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Whilst the UK Budget was naturally focused on addressing the coronavirus situation in the UK, with a £12 billion stimulus package to support economy through the COVID-19 outbreak, it also included a range of policies to reduce emissions, ensure our environment is protected and resilient to climate change, and generate green economic opportunities across the nations and regions of the UK. These announcements, in particular, hailed significant developments for low carbon heat. Rob Broom and Henry Davey explore the key takeaways for the UK energy industry. Read full article here.

Plummeting Oil Prices and COVID-19 Mean Trouble for Latin American Energy

By Paul O'Hop
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The recent failure of Saudi Arabia and Russia to agree on supply cuts have led to an over-supply in oil markets and historically low oil prices. This drop in revenues has potentially serious consequences for Latin American countries, like Mexico, Brazil, Venezuela and Ecuador, whose national budgets depend in large part on oil revenues. The problem has been exacerbated by ongoing tariff policy and, more recently, by the COVID-19 virus that is now threatening global supply chains (e.g., due to shelter in place orders and layoffs that are slowing production and delivery of critical equipment). The effects are being felt by developers, owners, contractors and lenders with respect to both conventional (hydrocarbon-based) projects, as well as renewable energy projects whose competitiveness is already being threatened by lower oil and gas prices. Latin American energy developers and contractors across the region are requesting *force majeure* relief under their project contracts as they grapple with these disruptions. As *force majeure* clauses vary greatly from contract-to-contract, it is important that parties active in this area review proactively the *force majeure* and other supply and performance-related provisions in their project contracts – as well as possible penalties for delay – determine the strength of their current positions, and develop contingency plans in the event that rights under such clauses are invoked.

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