

## 2024 Election Could Be Crossroads For Clean Energy Funding

By **Keith Goldberg**

*Law360 (November 1, 2024, 4:49 PM EDT)* -- Election Day will present a multibillion-dollar fork in the road for the energy industry and its reliance on the federal government to help fund its decarbonization efforts, energy attorneys say.

One path — the election of Vice President Kamala Harris — ensures that the clean energy money spigot opened by laws such as the Inflation Reduction Act is kept flowing by federal agencies, including the U.S. Department of Energy and the Environmental Protection Agency. The other — the reelection of former President Donald Trump — is marked with uncertainty amid his vows to repeal all or parts of the IRA or otherwise restrict clean energy funding in favor of fossil fuels.

"If Harris wins, you'll see the continued rollout of IRA funding, you'll see the continued DOE loans," said Pillsbury Winthrop Shaw Pittman LLP energy partner David McCullough. "Right now, we're in a situation where there is a rush to get awards issued and allocations granted by Inauguration Day, with the idea being, What happens if Harris loses?"

Repealing portions of laws like the IRA and the bipartisan Infrastructure Investment and Jobs Act would be a tall task even if Republicans gain control of both Congress and the White House, attorneys say. But through its personnel and control of federal agencies, a Trump administration could make it more difficult for clean energy developers to take advantage of grant and loan programs that have been juiced by those laws.

"Legally, it is challenging to unwind these programs," said Holland & Knight LLP partner Taite McDonald, who frequently represents DOE loan applicants. "It will be up to companies to work with the administration and Congress to ensure that the programs continue to be implemented."

### Scope of Energy Tax Credits Is at Stake

The linchpin of the IRA is a slew of new and expanded tax credits available for low- and zero-carbon technologies. Much of the eligibility guidance has already been issued, though some key guidance hasn't yet been finalized for credits covering things like hydrogen, clean energy manufacturing and clean fuels.

Attorneys say a Harris administration would likely push to make tax credit eligibility terms as generous as possible, along the lines of recently finalized U.S. Department of the Treasury regulations making solar wafer production facilities eligible for an advanced manufacturing investment credit established by the Creating Helpful Incentives to Produce Semiconductors and Science Act.

"You'll see far more expansive interpretations taken of some of the language in the various tax credits," McCullough said.

The opposite is likely to take place in a Trump administration. Any new or revised tax credit eligibility guidance could make energy projects that were once economical no longer so, said Crowell & Moring LLP partner Tyler O'Connor, who helped craft the IRA as the lead energy lawyer for the U.S. House Committee on Energy and Commerce.

"Frankly, even the threat of potential repeal or substantial regulatory revisions may impact companies' willingness to make investments on the basis of the tax credits," O'Connor said.

Akin Gump Strauss Hauer & Feld LLP energy projects partner Shariff Barakat, who focuses on tax equity financing, notes that the renewable industry relies heavily on private letter rulings and other notices issued by the IRS, which don't have to go through the rulemaking notice-and-comment process

"That's the bedrock of a lot of the industry practices and how people plan for projects, safe harbor them and figure out what they qualify for," Barakat said. "Theoretically, Trump could just pause or change those pretty easily without as much Administrative Procedure Act [issues]."

Barakat cited tax credits covering electric vehicles, which are a particular target of both Trump and congressional Republicans. A Trump administration could put a crimp in EV development just by tightening domestic manufacturing requirements for EV components, Barakat noted.

"A Trump administration could ... pull back some of the leeway that's been granted in the current electric vehicle regulations," Barakat said.

### **Federal Energy Project Funding Could Shift**

The Biden administration has handed out billions of dollars' worth of clean energy funding through laws like the IRA, IIJA and CHIPS Act, and there will be billions more available to hand out for the next presidential administration under those laws.

"If Kamala Harris wins, it's pretty much going to be status quo," said Akin Gump energy and transportation partner Susan Lent, who frequently represents energy companies seeking federal funding under those laws. "There might be some tweaks around the priorities of projects, but I wouldn't see any major shift in any way those programs will be administered."

O'Connor of Crowell & Moring said Harris has shown interest in increased funding for smaller businesses and disadvantaged communities as well as development of critical minerals, so those could be areas that get more attention and funding from agencies like the DOE.

He said a Harris administration could also benefit from the DOE Loan Programs Office, which has been steadily built up during the Biden administration after being largely dormant during the previous Trump administration and now has a well-defined process for issuing information requests, funding opportunities and negotiating loan commitments.

"Her administration may be able to act more expeditiously than the Biden administration was able to

do, simply by virtue of the fact that a lot of the preparatory work has already been done," O'Connor said.

But attorneys say a Trump reelection clouds any future work by the Loan Programs Office, or any other office that funds energy projects.

"There's so much agency role and discretion in terms of implementing programs," Lent said. "You could see some of the grant demonstration programs not continue to be implemented — even ones where the awards were made — or DOE not making loans. That's probably a greater question mark or concern with the election than Congress."

Even companies that have already secured a conditional loan commitment, or a loan for the first phase of their project, face uncertainty, attorneys say.

"Any company with a grant, loan or loan guarantee that hasn't been executed by Jan. 20, 2025, may find, as its new negotiating counterparty, an administration that is not interested in the same policy objectives or in supporting the same projects as the prior administration," O'Connor said. "Whether President Trump ultimately elects to support certain facets of the energy industry and not others, or use the available tools provided by the IIJA and IRA, remains to be seen."

Given Trump's policy preferences, applications for things like EV grants would struggle to get traction more than other types of projects, McDonald of Holland & Knight said. But she noted that many of the grant and loan programs stem from bipartisan legislation like the IIJA and CHIPS Act, and a lot of the pending applications at the DOE's Loan Programs Office are for projects that have bipartisan support.

"There's a lot of lending authority and a lot of value this program brings to combating China and ensuring U.S. global energy leadership," McDonald said. "I personally think that at the end of the day, that would encourage the Trump administration to use the program instead of letting it lay dormant."

--Additional reporting by Kat Lucero. Editing by Alanna Weissman and Kelly Duncan.