CRA Insights:
Energy

CRA Charles River Associates

December 2020

A Q&A with Donald Santa

In this edition of *CRA Insights*, Herb Rakebrand talks with Donald Santa, a former FERC Commissioner and most recently, President and CEO of Interstate Natural Gas Association of America.

Don has held many roles connected with the US natural gas and electric power industries as a policymaker, trade association leader, and corporate and outside counsel. In addition to his most recent role at Interstate Natural Gas Association of America, Don was a commissioner with the Federal Energy Regulatory Commission (FERC) during the last major restructuring of the gas industry. He was formerly in-house counsel at LG&E Energy Corporation and counsel to the US Senate Committee on Energy and Natural Gas Resources. Mr. Santa holds a JD from Columbia Law School and an AB in Political Science and Public Policy Studies from Duke University, Trinity College of Arts and Sciences. He is an adjunct professor at Georgetown University Law School.

Don, thank you for joining us to talk about the natural gas industry, the role of state government in policy, and what climate policy might look like in the Biden administration. So what can we expect for federal climate policy under Joe Biden?

The Biden Climate Plan (Biden Plan) is ambitious and includes a commitment to achieve net zero carbon emissions by 2050 and a carbon-free electricity sector by 2035.[1] That's only 15 years from now. For some perspective, in 2019 38% of the electricity generated in the US was produced from zero carbon sources.[2]

The climate plan was central to Biden's platform and linked to other key planks, such as economic stimulus and environmental justice, so it's safe to assume that climate impact will be a criterion applied across the spectrum of federal actions he may take. In addition to renewables, the plan includes nuclear and hydro as clean sources of electricity to meet the zero-carbon mandate. It also recognizes the role that carbon-capture technology can play, which seems to indicate continued use of fossil fuels to generate electricity.

---

1 The Biden Plan to Build a Modern, Sustainable Infrastructure and an Equitable Clean Energy Future, at https://joebiden.com/clean-energy/.

2 See US Energy Information Administration, https://www.eia.gov/energyexplained/electricity/electricity-in-the-us.php.

Interestingly enough, the Biden Plan does not include a cap-and-trade mechanism or a carbon tax to ratchet down carbon emissions, but calls for an unspecified enforcement mechanism to ensure the goals are met.

Of course, parts of the Biden Plan would require new law and getting a bill through Congress will be difficult in the current political environment. Nonetheless, President Biden will have considerable leverage to affect change through executive orders, regulations issued pursuant to current law, federal research and development funding, and the role of the federal government as the single largest purchaser of consumer goods in the world.

An advisory subcommittee to the Commodity Futures Trading Commission recently recommended placing an economy-wide price on carbon to reflect the true social cost of those emissions. What impact do you expect this report will have?

It's an important report. The fundamental finding of the subcommittee was that climate change is a risk to the stability of the US financial system in its ability to sustain the American economy.[3]

This is an important finding and hopefully it will add to the momentum for cost-efficient policies to address climate change. Relying on price to identify the most efficient way to achieve reductions in greenhouse gas emissions would avoid the pitfalls of an approach that relies on mandates, subsidies, and other policy tools.

How does the Biden Plan mesh with existing state and regional initiatives?

It appears the Biden Plan intends to supplement state and regional initiatives to reduce carbon emissions. Even so, the goal of zero carbon emissions from the electric sector by 2035 is more aggressive than the most ambitious state plans, such as California and New York. Should the Biden Plan become an enforceable federal mandate, states will need to update their plans. And those states with less ambitious plans, or no plans at all, will have a lot of ground to make up.

What does a change in administration mean for the natural gas and electricity power industries?

Current policy debates within FERC provide some clues as to what a Biden FERC might prioritize. The conversation surrounding FERC's 2018 Notice of Inquiry on its natural gas certificate policy highlights several areas that a new FERC majority might choose to address. These include the criteria for the determination of need under Natural Gas Act (NGA) Section 7, the scope of the National Environmental Policy Act (NEPA) review undertaken for a pipeline certificate application, and whether pre-construction activities will be authorized while permits are pending from other agencies.

For electric markets, FERC may be more amenable to resolving tensions between its wholesale power market rules and the priorities established by the clean energy plans of individual states. The Commission will likely finalize its proposed policy statement on consideration of RTO proposals to incorporate state-determined carbon prices within their market rules. A new FERC majority is likely to be favorably disposed to such RTO proposals.

---

[3] "Managing Climate Risk in the U.S. Financial System," Climate-Related Market Risk Subcommittee, Market Risk Advisory Committee of the US Commodity Futures Trading Commission, September 2020, at https://www.cftc.gov/sites/default/files/2020-09/9-9-20%20Report%20of%20the%20Subcommittee%20on%20Climate-Related%20Market%20Risk%20-%20Managing%20Climate%20Risk%20in%20the%20U.S.%20Financial%20System%20for%20posting.pdf.

Will FERC need to restructure the electric power and natural gas industries again to accommodate the transition to a lower-carbon energy economy?

No, there is no need to restructure the natural gas and electric markets. The existing market mechanisms and regulatory framework created by FERC's previous restructurings of the electric power and natural gas industries have proven to be adaptable to changes in the energy economy and public policy.

Competition in wholesale power markets led to natural gas displacing coal in electric power generation. FERC's policies have embraced demand response in wholesale power markets, and the integration of new power supply technologies such as renewables and energy storage.

The natural gas framework is also adaptable. Setting aside current challenges to siting natural gas infrastructure, pipelines are built when demand supports investment in this capital-intensive, long-lived infrastructure.

Some activists have called for amendments to the Natural Gas Act. What, if anything, should be changed to make it work better?

A fundamental rewrite of the NGA framework is not necessary, but the law could be made to work better with two more narrowly focused changes. First, the ability of a state agency to deny a permit, and effectively "veto" FERC's finding that a proposed pipeline is necessary, should be addressed. Second, the statutory period for FERC to rehear its orders should be extended to address the problems with tolling orders.

Given the ongoing energy transition, how should regulated companies in the electric and natural gas space think about business models and rate models?

Regulators can create significant incentives to invest in technologies and services that meet consumers' needs with lower emissions (and, eventually, no emissions) by allowing recovery of such costs in utility rates. Utilities and their investors also may see this as a way to create new revenue streams at a time when energy demand may be slowing.

But there are some pitfalls to this approach. Utilities are the collection agents for costs to ensure reliability, resilience, and the ability to meet energy demand in an environmentally responsible manner, for example through state-mandated renewables' goals and support for the continued operation of nuclear power plants. While the public may support these goals in principle, they may not be so enthusiastic when it comes to parting with their hard-earned dollars to pay for them. Consumer pushback may grow if the cost of multiple public policy mandates results in significantly higher utility bills. For utilities, the risk is that elected officials and regulators may respond to an outcry by looking for ways to trim customers' bills at the expense of utility shareholders.

Are there ways to encourage greater efficiency and innovation through competitive services?

For the utility, innovating through competitive services could have benefits. First, it reduces the risk of becoming a "political pinata" as elected officials and regulators respond to consumer backlash. Second, it may create opportunities for utility holding companies, via unregulated subsidiaries, to compete and potentially profit in markets with much less risk of regulatory recapture.

What does the energy transition mean for the natural gas industry?

It's a puzzling time for natural gas. Domestic natural gas supply is remarkably abundant, and we've never been closer to the industry becoming a globally traded commodity. Yet, it is increasingly difficult to construct domestic natural gas infrastructure. As a source of energy, natural gas also faces headwinds in some downstream markets as state-specific greenhouse gas programs are implemented.

So how should the industry respond?

The natural gas industry needs to demonstrate, convincingly, that natural gas is essential to achieving the nation's clean energy goals. Natural gas has an important role to play to make it possible for the nation, and the world, to meet clean energy goals in the most efficient, least costly way. To have an enduring role in the energy transition, the natural gas industry can't simply rest on the laurels of past achievements. It must deal responsibly with the GHGs attributable to natural gas (i.e., methane emissions) and advocate for, and adopt, technologies such as carbon capture, utilization, and storage (CCUS) that will enable continued natural gas consumption in an increasingly carbon-constrained energy economy.

Natural gas can do for the world what it has done for the United States. Just as natural gas displaced coal-fired electric generation in the US, it can back out less benign fuels around the world. The industry here and abroad has already made significant capital investments to support global LNG trade. This should be harnessed to achieve near term, cost-effective reductions in carbon emissions on a global scale.

Contact

Herb Rakebrand
Principal
Boston
+1-617-425-3758
hrakebrand@crai.com

CRA Charles River Associates