

Washington Analysis - Political odds, election predictions and energy sector impact

An interview with Whitney Stanco – Vice President and Senior Energy Analyst – Washington Analysis



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James Mick:

Welcome to another edition in TortoiseEcofin's ongoing series about the energy evolution. I'm James Mick, Senior Portfolio Manager at Tortoise, and today we are joined by policy expert, Whitney Stanco, from Washington Analysis. Quick background on Whitney, she is the Vice President and Senior Energy Analyst at Washington Analysis. Her research coverage includes legislative, regulatory, foreign policy, tax, and legal issues affecting the energy sector. Her key areas of focus are oil and gas upstream, midstream, and downstream, as well as transportation, mining, and markets. Prior to joining the firm, Whitney was a senior advisor at The Rapidan Group, where she covered U.S. policy in the context of energy markets. In addition, she advised institutional investor clients on cleantech, electricity, and oil and gas policy issues for nine years at the Washington Research Group.

Whitney previously worked as a consultant for BP in Houston and for Accenture in Germany. A native of Midland, Texas, she received her BBA in Management Information Systems from the University of Texas at Austin and her MA in International Relations with concentrations in energy, economics, and finance at the Johns Hopkins School of Advanced International Studies. That's a long-winded way of saying she is extremely well-qualified to talk with us today about politics. Whitney, thank you for being here.

Whitney Stanco:

Thanks, James. I really appreciate it.

James Mick:

Great. Well, let's start at the top and work our way down. Of course, that means the topic on everyone's minds, the election. Lots of questions there, but we'll start broad. How does Washington Analysis see the election playing out? Close race? Who's the winner?

Whitney Stanco:

For longer than most, here at Washington Analysis we've expected to see a Democratic sweep, and recently we've increased Biden's odds of winning and the Democrats' odds of retaking the Senate. Our macro political analyst, Joe Lieber, now gives Biden about a 70% chance of winning and Democrats a 65% chance of winning the Senate. The core

follow up question to that is that if that is indeed the scenario on election day or election week, how many Senate seats do Democrats pick up? And I think the polls are showing a widening of opportunities for Democrats to pick up Senate seats. In a 50, 51-seat Democratic Senate majority scenario, we see about 40% odds that Democrats get rid of the legislative filibuster at some point. If it's a 52-plus-seat democratic majority in the Senate, then those odds would probably rise to about 50%. And keep in mind that if the legislative filibuster is removed, it's likely off to the races on lawmaking in a way that we haven't seen in decades.

James Mick:

Wow. Okay. Maybe assuming not your base case, but assuming we get a Trump victory, what does that look like for the broad picture of the U.S.?

Whitney Stanco:

We believe that if Trump is reelected, the Senate will probably stay in Republican hands. From a legislative perspective, that might not be all that significant, since Democrats are very likely to retain control of the House. So, under a divided government scenario, we think Senate Majority Leader, Mitch McConnell, would continue to focus attention on getting judges confirmed. There hasn't been much attempt to work across the aisle on meaningful bipartisan legislation, and we think that probably would continue if Trump won and the Senate stayed in GOP hands. So, that means no major tax or infrastructure legislation is likely, though we may see something like a five-year highway bill cross the finish line and some pared down COVID-related stimulus.

James Mick:

Okay. So then assuming we get a Biden victory, you touched on this a little bit, but what does that look like for the broad picture of the U.S.?

Whitney Stanco:

Here's where, from our wonky policy perspective, I can't underscore enough how important this question of whether or not we're going to have a legislative filibuster is. If the filibuster remains in place, we think it's possible that in a year one scenario, you have a phase four stimulus COVID package and then a tax package on a reconciliation bill later in 2021. And in that scenario, corporate taxes are probably lifted to 28 to 30%, and there may be an increase in the corporate minimum tax. However, most of Biden's other legislative priorities would face really steep hurdles, and policy actions will be limited to existing executive authorities and agencies, though he can probably accomplish some of his priorities on infrastructure, maybe healthcare, and certainly some clean energy tax incentives on a reconciliation tax package. On the other hand, in a scenario where Democrats can't get Republican support on much of anything in the first few months of a Biden presidency, or even early-on, on a stimulus package, say, they may decide to go ahead and eliminate the legislative filibuster. If that's the case, then you could see a lot of Biden's legislative priorities moving forward, and

that could range from a large infrastructure bill to a voting rights act to healthcare and even some priorities in climate change.

James Mick:

Okay. Well, let's get a little bit more specific now and focus in on energy. And again, if we assume a Trump win, what does that look like for the energy sector? And are there any big issues that you think Trump might try to tackle?

Whitney Stanco:

Well, I do think he's going to push harder to get a deal with Iran, although increasing pressure there, it's possible that we revert to some more Iranian escalation in the region. I do think the deregulatory process will continue on a domestic side, and my suspicion is that it will become more successful in the courts over time, primarily related to a couple of factors. One, they may be less inclined to rush through some of these administrative processes, which courts don't tend to like when you rush. So, I think if they take their time, they'll be more successful in courts. And two, just as a result of the number of Trump-appointed judges now on the bench, I think that will help their success rate in court. Not to mention the fact, you're probably going to have a backstop of a 6-3 conservative majority on the Supreme Court.

But another thing that you could see Trump tackle, the EPA was going to have an opportunity to rewrite the Renewable Fuels Standard starting in 2023, and I suspect that will be a pretty big battle. But the outcome will likely be more pleasing to refiners than to, say, corn and soybean farmers. Really though, in a second Trump term, I think what we expect to see is that the primary action will continue to be at the state and local level for energy. So, for oil and gas companies, the things that we focus on are regulatory actions on methane emissions, so think of New Mexico and perhaps Texas; maybe court and state actions on oil pipelines, so think Minnesota, Michigan; raising some state taxes on the industry, so there I would point to Alaska and perhaps Pennsylvania; and then maybe some additional work on setbacks and permitting in California and Colorado.

James Mick:

Okay, great. Clearly going to be different if we have a Biden victory. What do you think his priorities would be?

Whitney Stanco:

Well, initially, because of what's going on with COVID, I think Biden's priorities are going to be on stimulating the economy and jobs through incentives and federal purchasing related to clean energy. I think he's going to want to set some ambitious goals on climate. We're recording this on October 16th, and there was the town hall last night, and Biden had a quip that I think reflects sort of his view. The way he said it was, "The president thinks fighting climate change is a joke. I think it's jobs." And I think relative to his primary challengers on the Democratic side, Biden's focus on climate and energy is more about opportunities than punishment. I think that will be reflected in his early priorities.

James Mick:

Oh, that's great. So you do think that energy would be relatively high on his list in the context of jobs?

Whitney Stanco:

Yeah, I think that's right. And because he tends to associate this issue with job creation and stimulus, I do think he's going to prioritize issues where the stimulus link is strong, so tax incentives for clean energy, job creation programs related to pollution cleanup, federal investment in buy American clean technologies. And, you know, to pay for some of that, he's likely going to target the oil and gas industry's longstanding tax benefits in the tax code, perhaps the ability to expense intangible drilling costs.

That said, I think that the odds are probably higher of getting green goodies through Congress than big oil tax cuts, because it's possible that they could lose some votes in the Senate on oil industry tax breaks from some moderate senators. So we're going to have to watch that debate pretty closely, but I think from a Biden perspective, it's more a focus on stimulus.

James Mick:

Yeah, that makes sense. Have there been any discussions by Biden on a price of carbon, some type of a carbon tax?

Whitney Stanco:

The Biden policy plan doesn't call for a carbon tax explicitly. It does call for a carbon adjustment fee or quotas on carbon-intensive goods at the border. So, the idea there is that you'd put a fee on carbon-intensive goods from other countries that are failing to meet their climate obligations. He can actually do that himself if he declares climate change an emergency. He doesn't need Congress in my view, but I just don't think that's going to be a first 100 days priority. I think if legislative goals fail within the first couple of years, then that becomes maybe more likely in, say, years three and four. That said, domestic tax policy is written by Congress, and House Democrats do call for a price on carbon in their big 500-page detailed document on how they plan to deal with climate change. And my sense on that is that while a carbon price is possible on a reconciliation tax bill, I think it would be a tough lift just due to the timing, the procedure, and the politics.

On the other hand, if Senate Democrats do remove the filibuster, they may have more time to whip a consensus in their caucus on it, though I think at the end of the day, it would probably be something like a carbon dividend plan, which for example, is something that Senate candidate John Hickenlooper, who's the former governor of Colorado, and he's a relative friend for the oil and gas industry, supports on his climate plan. But just generally, I think a carbon price, which is a regressive tax, is going to be a tough lift while the economy is pretty fragile.

James Mick:

Yeah, that makes sense. That's very interesting. I think a lot of listeners are very interested in the Biden impacts for energy. So if we dig into a little bit more of that and some of the things you mentioned, let's start with fracking.

Hydraulic fracturing, it's been one of the key reasons that the U.S. has unlocked so much oil and gas production over the last 15 years. Does a Joe Biden plan to ban hydraulic fracturing?

Whitney Stanco:

No, and he's said it over and over and over again. And I do think he means it from a broad sense. Is he going to regulate? Yes. But I don't think he plans to kill it.

James Mick:

Okay, so no ban on fracking. That's good. Then what about the topic of federal lands? What's Biden's plan on that, and maybe what and where does that impact?

Whitney Stanco:

Yeah, that's a really good question. Maybe let's just read through what exactly his plan says, and then we can parse together what it means. On Biden's climate plan, he says when it comes to federal lands, he's going to be protecting America's natural treasures by permanently protecting the Arctic National Wildlife Refuge and other areas impacted by President Trump's attack on federal lands and waters. He's going to be establishing national parks and monuments that reflect America's natural heritage. He's going to be banning new oil and gas permitting on public lands and waters, modifying royalties to account for climate costs, and establishing targeted programs to enhance reforestation, develop renewables on federal land and waters, with a goal of doubling offshore wind by 2030.

There's a lot in that sentence, but I think the key point is that there's a little bit of a contradiction in the pieces that relate to oil and gas. He doesn't want to do any oil and gas permitting on public lands, but then the next clause says that he wants to modify royalties to account for climate costs. Well, royalties are set at the lease sale when you're talking about federal lands development, and so if you try to change those after the fact, I think you're probably going to run into a court buzzsaw. So there's a little bit of contradiction in that, because typically royalties are sort of forward-looking for new leases. I think that's part of the reason why the Biden plan on federal lands has left a lot of people sort of scratching their heads about what does this mean?

For my part, I think the most likely outcome is that Biden would come in and in the first 100 days or so, he would probably set aside the scheduled lease sales for next year on federal lands. And he will likely say that we're going to set these aside pending deeper climate reviews, because you've got to keep in mind, when it comes to the federal government, there are minimum standards for environmental review, but there's really no maximum standard. So that's sort of lease sales, which in my mind is more associated with growth than it is with production in the near term.

Then on permitting on federal land and royalty reform, I think that's primarily going to fall to whomever he chooses as interior secretary. And ultimately, in my view, I think there's more reason to be concerned about the Gulf of Mexico, say, than New Mexico for three different reasons. I know people have different views on that. This is just mine. The reasons I would point out is it's because if Senator Doug Jones loses his Senate seat in Alabama this cycle, there's going to be very little Democratic representation of the Gulf of Mexico in Washington, DC. Second, because I think the Clean Water Act

underpins much of the government's authority in U.S. waters, and I view that law as extending a lot of power to the federal government.

And finally, because two of the names that I hear floated most for interior secretary are retiring Senator Tom Udall from New Mexico or Rep. Deb Haaland, also from New Mexico, and who would be the first Native American as interior secretary, and in fact, the first Native American as cabinet secretary. So, if I look at those things in general, I think the risk profile for the Gulf of Mexico is probably a little bit higher.

James Mick:

Yeah. That's some great context, some really good inside information there. Maybe moving on a little bit, Biden clearly has been in office before, and when he was VP during a time of great prosperity for oil and gas production, in particular, natural gas, would you consider him to be anti-natural gas?

Whitney Stanco:

No, I don't see him so much as anti-natural gas as much as pro-addressing climate change. I think he's going to have advisors who see those two things as the same, but I think sometimes those advisors will win and sometimes they won't. But I don't think that's probably where Biden himself sits.

James Mick:

Of course, I think during the Obama administration, it was probably deemed a war on coal. Is that something that you would anticipate again?

Whitney Stanco:

Another war on coal?

James Mick:

Yes.

Whitney Stanco:

Yeah. I mean, I don't think the focus is going to be on coal. I think the difference between the Obama Presidency and now, I think then the target was on coal. Now, I think in terms of the Democratic base, the target is going to be on the oil and gas industry. That said, yes, there will be repercussions to that sentiment within the Democratic base, but from my perspective, I think it ends up looking more like a thousand little cuts than a bazooka. It doesn't mean it won't hurt a little bit, but I just see that playing out as incremental regulations and policy decisions that increase the regulatory footprint for the agency, but it's not about cutting it out altogether.

James Mick:

So then given that, obviously, maybe not so much a negative on oil and gas, but a focus of positivity on renewables as you mentioned earlier, Biden has discussed a \$2 trillion plan for climate change. Is that even realistic?

Whitney Stanco:

I do think we're going to see a massive investment in renewables and renewable incentives. And in my view, that's most effectively done through the tax code. I think House Democrats lay out over 35 different green tax incentives in their 500-page climate report that they would like to see enacted. They range from everything from electric vehicles to green transportation to green manufacturing, energy efficiency, wind, solar, battery storage, offshore wind, and the list goes on.

And like in the 2009 stimulus bill that was passed in the wake of the financial crisis, there is some discussion in Congress of making these tax credits directly payable. In other words, even the companies with no tax liability might be able to take advantage of them for a period of time. This is particularly important in a recession when tax liabilities are down. And so even when tax liabilities are down, you could see a meaningful impact from these tax credits in the code. So I think this is something that they're definitely going to talk about. I think they're going to have multiple shots on goal, if you will, to do some of these green tax credits. They could come in an early stimulus package, they could come in an infrastructure package, or they could come on a reconciliation package.

James Mick:

So, obviously that would probably mean an extension of the wind and solar tax incentives that are currently out there, extending those beyond where they are now, right?

Whitney Stanco:

That's right. I think of it more as an extension and an expansion, since they'll also likely be adding new technologies.

James Mick:

Okay, great. Okay, that makes a lot of sense. Let's shift gears a little bit now and talk regulations. Clearly it's been an incredibly difficult time to build pipelines of late in the United States. Keystone XL, Dakota Access Pipeline, those come to mind right away. Maybe let's start with Keystone XL. Can you just give us a brief history of where we stand on that pipeline?

Whitney Stanco:

It's hard to give a brief history of Keystone XL. I once tried. The permit was filed in 2008. I once created this elaborate timeline to sort of show how each time that they tried to rush the process, that it led to a major setback in court. And I literally could not make the font small enough to fit it all on the page. So maybe we talk about where we are with

Keystone XL. Essentially, they still have a presidential permit right now. They have their major permits from the federal government, except for water permits.

Right now, from my perspective, I think the future of KXL is really binary and tied to the election. So if Biden wins, he said that he is going to rescind the presidential permit for the project. I think that he means that, and I think he telegraphed it clearly upfront, in order to make his position known. If Trump wins, I think there are still some remaining legal hurdles and permitting hurdles for the pipeline, but it has, let's call it a middling chance of getting done and making it through another round of court litigation and actually putting the pipe in place.

James Mick:

That was great. You condensed 12 years into about a minute, so that was really good. Maybe if we shift gears to Dakota Access Pipeline, commonly referred to DAPL, maybe same thing there, a little quick recap of where we stand on that one.

Whitney Stanco:

Dakota Access has been in court since 2016. There have been some favorable rulings for the pipeline and a couple of negative ones. The most recent big decision came from a district court in DC, who ruled earlier this year that the project needs an environmental impact statement, known as EIS, or it's basically a full environmental review, and therefore its easement is invalid. The judge then ruled later this year that the pipeline should shut down while the agency, in this case it's the Army Corps of Engineers, completes the EIS. So, Energy Transfer and the Trump administration asked the appeals court, the higher level court in DC, to reverse those orders on an emergency basis, and that court decided that the judge, on the shutdown portion of his order, at least needed to do a different analysis.

So now what we have are two court cases ongoing. The first is in the DC Circuit Court of Appeals, and it's an appeal of this lower court's decision that the pipeline does need this full environmental review and therefore doesn't have an easement. The second court case is in the lower court, and it's the judge, and he's redoing his analysis on whether a shutdown is necessary.

So I think on DAPL, there are three things to look at on this issue. The first is who wins the election, because I think Trump would be better for the pipeline, because I think he's more likely to be a backstop. The second is, what does the appeals court say? Do they agree with the lower court that the pipeline does in fact need an environmental review and therefore doesn't have an easement? Here I think the answer is probably yes, just based on the three judge panel there, but we're going to get oral arguments the day after the election, so we can get some more information then. And then finally, what does the lower court judge say about shutting down and/or what does a potential Biden administration decide about a potential shutdown? So I think those are three core pieces of information that are outstanding that we're going to need to watch to sort of get a better idea of what the future looks like for DAPL.

James Mick:

DAPL is interesting in that it does feel different, because this is a pipeline that was already operating, and clearly, as you alluded to, it has been in the news since its inception in 2016. But have you ever heard of attempting to shut down an already established pipeline like that?

Whitney Stanco:

Attempting, yes. I think this is probably the closest that folks have come that I can recall.

James Mick:

I think a question on a lot of our investors' minds is, could this happen to other pipelines or do you feel like this is somewhat of a one-off type event?

Whitney Stanco:

In my opinion, this is a really unique event. This is a pipeline that's been under litigation since 2016, since before its inception. This pipeline was extremely controversial. It was controversial at the end of the Obama administration before they left office, and it struck the nation's attention with the protests that went out on the Plains. And so I view this as a really unique situation, both legally and sort of situationally as well. The only other pipeline that I can think of, existing pipeline, that's under this much controversy, is probably Enbridge's Line 5 up in Michigan.

James Mick:

Yeah. Certainly was in the news a lot. If we stick with the regulatory theme, Colorado continues to be in the news, in particular here of late, just in regards to establishing a required distance for drilling of wells from structures and/or waterways. Can you give us some thoughts on what's going on there and where you guys see this going?

Whitney Stanco:

Right. The Colorado Oil and Gas Conservation Commission, which is the main regulator in the State of Colorado, is in the middle of a process to update its rules to reflect the changes to the law that were enacted by the Colorado legislature last year. Within this process, they were looking at lots of different things, and one of the things they took a look at was setbacks. They surprised folks, because there was a staff proposal put forward that would have increased setbacks a little bit, but not a lot. And then the commissioners decided to move that to something like 2,000 feet.

The rules are not final yet, and in fact, from my perspective, I'm still looking for the commission to do its hearing and deliberation on how to handle setbacks from not just buildings but also from waterways, which I think will be important, and that's going to happen towards the middle of November. But I think at the end of the day, what the Colorado Oil and Gas Conservation Commission put together, it's not as stringent as the failed ballot initiative would have been. That ballot initiative would have set setbacks at 2,500 feet from buildings and from even intermittent waterways, and there wouldn't have been any exceptions.

What the COGCC is looking at doing is 2,000-foot setbacks from buildings, with some exceptions for industry to work around those in limited circumstances. And then we don't know yet how they're going to set the setbacks from waterways. So I think it's very interesting and important to watch for the industry, and think it's reflective of a movement in Colorado that's been going on for several years and has election cycle after election cycle gained steam within the state.

James Mick:

Yeah, that's great color and detail. If we step back up a few thousand feet, one of the things that you mentioned earlier that I wanted to just come back to, and something that we've talked about as well, is states' rights versus maybe where the federal government is. And while the president and the federal government, they clearly have a lot of control and influence, the states actually have a lot of impact on many of the things that we've been talking about here and that we've seen over the last several years.

And in general, I think from our perspective, the Trump administration hasn't been amazing for oil and gas, and I think primarily that's because a lot of that impact has come at the state level, as we talked about. So maybe a change to a Biden presidency doesn't necessarily mean a massively different regulatory environment for oil and gas companies. How would you assess that, and what do you feel the impact is from a state perspective versus the federal perspective on regulatory decisions?

Whitney Stanco:

Yeah, I sort of view policy as a bit of a pendulum, right? When environmental groups view or citizens view that some of their priorities aren't being taken care of at the federal level, then they push some of their efforts down into the state level. And I think that's what we saw in the Trump administration, and we saw it play out in Colorado. You know, they're working on methane emissions regulations in New Mexico. I think that's a direct impact of the fact that the Trump administration moved away from what the Obama administration put together on methane emissions. So, I definitely think there's a bit of a push and pull when it comes to policy, so that if you have a Democrat in the White House, I suspect the focus will be on federal policy and less on state policy. And likewise, if Trump is reelected, then I think we can expect more out of the states.

And one thing that I would point out, if states aren't going to get any federal money related to COVID and helping the state budgets with COVID, I do think you're probably going to have several state budgets across the country that are in dire straits. And as a result of that, you're going to have some discussions about raising taxes. I think most significantly, we're probably going to see that in Alaska. There's a ballot initiative up in Alaska to raise taxes on the oil and gas industry. It's probably got 50-50 odds of passing, but if it doesn't pass, I do think the Alaska legislature is going to have to address taxation issues, and they're probably going to look at the oil and gas industry.

Likewise in Pennsylvania, they've had budget deficit issues for several years. The governor there has really wanted to put in place a severance tax and has been unable to get it through the state legislature. But we'll see what happens if the

state budget's really strapped related to COVID recessions and just general economic downturn. I think those are issues we're going to have to watch.

James Mick:

Yeah. I really like your pendulum description. That's very good in terms of just explaining that dynamic between the federal and the state level, so that's very helpful. Well, we've covered certainly a lot of territory here. Any other key topics that you feel would be relevant for our listeners?

Whitney Stanco:

Well, we probably should talk a little bit about Iran policy, because it's so impactful to oil markets and how that might be different under Trump versus Biden. Biden put out an op-ed this summer, and it was pretty clear that he would reenter the JCPOA as long as Iran comes back into compliance. We've hosted some calls and talked to some folks about what that could mean in terms of a timeline for when U.S. sanctions on Iranian crude oil could come off. And I think if Iran decides to go back into compliance, that would mean that they need to blend down some enriched uranium, get rid of some centrifuges, basically meet the technical requirements that were laid out in the JCPOA, it's possible that U.S. sanctions on Iranian crude oil could be lifted as early as Q1 or Q2.

Obviously, that was going to have a major impact on oil markets, but Biden has made it pretty clear that he's not going to wait to lift the sanctions until they extend the deal for several more years or get some other provisions. He's basically stated that if Iran gets back into compliance, the U.S. will too, and lifting those nuclear-related oil sanctions is a part of the U.S.'s compliance with the JCPOA.

James Mick:

If we had to summarize maybe just a couple of the quick thoughts that I'm taking away, is certainly a Biden presidency would have a big focus on jobs, using the stimulus through maybe an infrastructure bill and the tax code to help create those jobs, which would be a benefit to the clean energy sector. And then maybe one of the biggest takeaways is that filibuster outcome is certainly a big deal, and how that would play out would be a big impact on how policy would be dictated from there.

Whitney Stanco:

Yeah. I really do think the filibuster question is quite important. Congress has been at loggerheads for so long, I think we tend to set them aside as not being able to do hard things. But part of the reason why they can't do hard things is because you need 60 votes in the Senate. But if you got rid of the filibuster, you could pass bills through the Senate with a simple majority, and I think the wheels of Congress would start churning and turning again in a way that we haven't seen in a while.

James Mick:

Great. Well, the last question from me, and it's a very important one, as a football fan, what should be the nickname of the Washington Football Team?

Whitney Stanco:

Oh, you know, I'm a nerd, a policy nerd, so I always think it was cool that the baseball team in Washington used to be called the Senators, because I thought-

James Mick:

Oh yeah, I like that.

Whitney Stanco:

Yeah, they reflected the nature of the town. So the football team, maybe the Washington Monuments, the Washington Legislators?

James Mick:

Ah, so your vote, Senators or Monuments. I like that.

Whitney Stanco:

The Washington Windbags, something like that.

James Mick:

Great.

Whitney Stanco:

Something to reflect the true nature of Washington, DC.

James Mick:

Yeah, no doubt. Well, this has been fantastic, and we at Tortoise really thank you so much for kindly giving us your time, especially right before the election. We're only a couple weeks away. It's clearly a very timely topic, and we appreciate all the insight that you provided today.

Whitney Stanco:

Absolutely. Happy to do it. You guys take care.

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