March 31, 2021

SULLIVAN & CROMWELL LLP

Dear friends,

As you know, this afternoon in a speech in Pittsburgh, President Joseph Biden announced his long-awaited infrastructure proposal, the American Jobs Plan. The proposal – which is larger than the $1.9 trillion American Rescue Plan, the COVID-19 relief bill the President signed into law earlier this month – anticipates federal funding over eight years of $2.3 trillion, including $621 billion on transportation, $111 billion on water infrastructure and $100 billion on broadband. This very ambitious spending and investment program is paired with President Biden's Made in America Tax Plan to provide the "pay for" funding that the infrastructure plan will require, and which entails a number of proposed changes to the tax code, including several reversals of modifications made by the Tax Reform Act of 2017, most notably an increase in the corporate tax rate from 21% back to 28%.

These two plans are in addition to the Biden Administration's announcement on Monday, March 29, led by four different Departments – Interior, Energy, Commerce and Transportation – of a major initiative to support rapid offshore wind deployment. The initiative includes advancing a required Department of Interior Bureau of Ocean Energy Management (BOEM) environmental review for the large Ocean Wind project offshore New Jersey – the third such environmental review of a major proposed offshore wind project after the Vineyard Wind (Massachusetts) and South Fork (Rhode Island) offshore wind projects – with a promise of launching environmental reviews of another 10 proposed offshore wind projects, as well as a new wind energy area in the New York Bight, a shallow area of water between Long Island and New Jersey. The initiative aims to deploy 30 Gigawatts of offshore wind by 2030, anticipated to require more than $12 billion per year in capital investment in projects on both coasts of the U.S. This announcement, which may be more important to the private sector than the infrastructure plan, is summarized at the end of this flash report.

Organization of Infrastructure Plan – American Jobs Plan

The 21-page **fact sheet** summarizing the two major pieces of proposed legislation focuses mainly on the infrastructure plan, dividing that plan into six categories, and with only a short section on the tax plan:

- Transportation infrastructure
- Water, electric grid and broadband
- Housing, educational and health care facilities, and federal buildings
- Care workers

- R&D, revitalization of manufacturing and small businesses, and jobs training
- Jobs and labor union measures

Tax Proposals

Since the focus of this flash analysis is infrastructure, we will not seek to summarize all the tax proposals contained in the Made in America Tax Plan, but that tax plan is forecast to raise over $2 trillion over the next 15 years. In addition to the proposed increase in the federal corporate tax rate noted above in the introduction, the tax proposals include a global minimum tax for U.S. multinational corporations, provisions to discourage the use of low-tax jurisdictions, further restrictions on inversion transactions, provisions designed to discourage moving jobs offshore, a minimum 15% tax on corporate book income, discouraging the use of fossil fuels, and improved corporate tax enforcement.

Prospects for Passage

The paired Biden Administration proposals remain only that for now – proposals. The bills will begin their life in the House of Representatives, where earlier this week three Representatives – Josh Gottheimer (D-NJ), Bill Pascrell (D-NJ) and Tom Suozzi (D-NY) – announced they would not support any tax-code changes unless Congress restores the deduction of state and local taxes (SALT), now capped at $10,000 under the 2017 tax reform. In light of the 219-211 margin by which the Democrats control the House, one more defection without a countervailing Republican defection will make passage of the tax proposal in the House impossible without restoring SALT. In that regard, it is worth noting that Rep. Gottheimer is a leader of the 58-member bipartisan Problem Solvers Caucus in the House, which has roughly equal members from the two parties, so there could be more Democratic Representatives who impose the same requirement to restore SALT in its full form as a condition to their support of the tax bill. Moreover, once the two bills leave the House, they will be considered by a divided Senate, where Senator Joe Manchin (D-WV) has expressed reluctance to repeat the practice of using reconciliation to enact major legislation opposed by Senate Republicans, as was done with the American Rescue Plan. In short, neither proposal is likely to be signed into law in the form announced today.

Possibly Limited Role for Private Sector

There is much to digest in the 21-page fact sheet, but there is also much detail omitted. The President's speech today did not fill in any of that detail, so more must be made clear later. Most important for those readers of this flash report who are private-sector infrastructure investors, operators or advisors, it is by no means obvious that the Biden infrastructure plan contemplates a significant role for the private sector. It is also worth noting that although the plan is a federal spending plan, much of the nation's infrastructure, especially in transportation, water and social infrastructure such as housing and health care (and less in the case of telecommunications and energy, which are largely in the hands of the private sector), is in the hands of states, counties, municipalities and public authorities. It would therefore appear that much of the proposed spending is intended to be in the form of outright grants to those governments, earmarked for the identified purposes.

In fact, a search of the 21-page fact sheet for the word "private" reveals only seven uses of that word, two of which are red herrings but are included here for completeness. Unfortunately no further details are yet available regarding these items.

- ***EV chargers.*** A grant and incentive program for state and local governments and the private sector to build a national network of half a million electric vehicle (EV) chargers by 2030;
- ***Changes to broadband competitive landscape.*** A red-herring reference to leveling the playing field between large internet service providers and providers owned by municipalities or rural electric cooperatives;
- ***Tax credits for electric transmission.*** Creation of a targeted investment tax credit that incentivizes the construction of at least 20 Gigawatts of high-voltage capacity power lines, and improved access to existing rights of way (no more detail is provided, but this is possibly very significant);
- ***Clean energy tax credits.*** 10-year extension and phase down of an expanded direct-pay investment tax credit (ITC) and production tax credit (PTC) for clean energy generation and storage, possibly one of the most important aspects of the plan for private investment; but not enough information is contained in the proposal (nothing more is said than the words we have used here) to determine whether this applies to all existing ITC and PTC programs across solar, wind and offshore wind;
- ***Clean energy accelerator.*** $27 billion Clean Energy and Sustainability Accelerator, focused on disadvantaged communities, to mobilize private investment in distributed energy resources; retrofitting residential, commercial and municipal buildings; and clean transportation;
- ***Hospitals.*** The second red herring use of the term "private," the word is used to contrast the quality and age of private-sector hospitals to that of Veterans Administration hospitals, but there is no proposal to increase investment by the private sector; and
- ***Regional innovation hubs and Community Revitalization Fund.*** $20 billion on at least 10 innovation hubs to drive private-sector investment in fuel technology development, to link urban and rural economies, and to create new businesses outside the current small group of high-growth regions.

Other Highlights of the Infrastructure Plan

- ***Transportation infrastructure.*** The plan calls for large sums to be spent across all the transportation sectors:
  - $115 billion to modernize bridges, highways, roads and main streets;
  - $85 billion to modernize existing public transit and expand systems, including bus rapid transit (BRT);
  - $80 billion to address Amtrak's repair backlog, modernize the Northeast Corridor (presumably including the Gateway rail tube project between Penn Station in New York City and Hoboken, New Jersey, but not mentioning it explicitly), improving existing corridors and linking new city pairs, and enhancing grant and loan programs;
  - $174 billion on EV, including electrifying the entire federal fleet of vehicles, including the United States Postal Service;
  - $25 billion on airports, including the Airport Improvement Program;
  - $17 billion on inland waterways, coastal ports, land ports of entry and ferries;
  - $20 billion on racial equity, environmental justice and affordable access;
  - Improved coordination of infrastructure permitting; and
  - $50 billion in dedicated investments to improve resiliency.

- ***Water infrastructure.*** The plan calls for $111 billion in order to accomplish several goals:
  - Replace 100 percent of the nation's lead pipes and service lines, with $45 billion spent on the EPA's Drinking Water State Revolving Fund and in Water Infrastructure Improvements for the Nation (WIN) grants;
  - $56 billion in grants and subsidized loans to states and other political subdivisions; and
  - $10 billion to monitor and remediate dangerous substances in water.

- ***Digital infrastructure.*** The plan calls for $100 billion on the following areas (with no mention of for-profit operators):
  - Prioritizing broadband networks owned by local governments, non-profits and cooperatives to reach 100 percent broadband coverage in the U.S.;
  - Promoting transparency and competition; and
  - Solving the broadband affordability problem without relying forever on subsidies.

- ***Energy infrastructure.*** The plan calls for $100 billion in the following areas:
  - Building a more resilient transmission system (noting the tax credits referred to above in "Possibly Limited Role for Private Sector");
  - Incentives for clean energy (noting the extension of direct-pay ITCs and PTCs referred to above in "Possibly Limited Role for Private Sector");
  - $16 billion to plug orphaned oil and gas wells and reclaiming mines;
  - Remediation and redevelopment of idle real property, and spurring buildout of physical, social and civic infrastructure in distressed and disadvantaged communities;
  - Building next-generation industries in distressed communities, including production tax credits for capital-project retrofits and installations, and expansions of the Section 45Q carbon sequestration tax credit; and
  - $10 billion on training of conservation and resilience workers.

- ***Housing and Social Infrastructure.*** Other areas of the plan include various expenditures on public housing, including $20 billion of Neighborhood Homes Investment Act tax credits and $40 billion on public housing infrastructure; $27 billion on the Clean Energy and Sustainability Accelerator referred to above; $100 billion to upgrade and build new public schools; $12 billion on community colleges; $25 billion on child care facilities; $28 billion on VA hospitals and federal buildings; and, notably, a very large $400 billion for care for aging and disabled populations.
- ***Research & Development.*** The plan proposes $50 billion for the National Science Foundation, $30 billion in additional R&D funding and $40 billion to upgrade research infrastructure in laboratories, with half of the latter funding reserved for historically black colleges and universities and other minority-serving institutions; $35 billion on climate science and related innovation and R&D; and $25 billion to redress racial and gender inequities in R&D and related areas of science and math.
- ***Manufacturers and Small Business.*** The plan proposes $300 billion on strengthening manufacturing supply chains for critical goods ($50 billion), protecting against future pandemics ($30 billion), federal procurement of clean energy-related products and services ($46 billion), regional innovation hubs and a Community Revitalization Fund ($20 billion), National Institute of Standards and Technology ($14 billion), improved access to capital for domestic manufacturing, including

extending the 48C tax credit program and support for clean energy and improved supply chains ($52 billion); a national network of small business incubators and innovation hubs ($31 billion, referencing credit and venture capital); and partnership programs with rural and Tribal communities ($5 billion).

- ***Workforce Development.*** The plan proposes $100 billion on workforce development, including $40 billion on dislocated workers and sector-based training, $12 billion on workforce development opportunities in underserved communities, and $48 billion on workforce development infrastructure and worker protection.
- ***Various Labor Programs.*** Without a price tag, the plan includes provisions for worker empowerment, including passage of the Protecting the Right to Organize Act, and other labor protections.

Monday's Offshore Wind Projects Announcement

As noted in the introduction to this report, the Biden Administration made a series of **important announcements** this past Monday about its goals for U.S. offshore wind development.

- ***New Wind Energy Area.*** The BOEM announced a new priority Wind Energy Area in the New York Bight, which the Administration says will create up to 25,000 development and construction jobs from 2022 to 2030 and an additional 7,000 jobs in the communities supported by the development. BOEM has said that it will publish a Proposed Sale Notice followed by a public comment period and a lease sale in late 2021 or early 2022.
- ***30 Gigawatts of Offshore Wind Energy by 2030.*** The four Departments announced this shared goal, which they estimated would require more than $12 billion per year in capital expenditure on both U.S. coasts, with a forecast 44,000 workers employed in offshore wind by 2030 and nearly 33,000 additional jobs in the communities supported by the activity. They also stated that this capacity would generate enough power to meet the demand of more than 10 million American homes for a year and avoid 78 million metric tons of CO^2 emissions.
    - BOEM announced that it plans to advance new lease sales and complete review of at least 16 construction and operations plans (COPs) by 2025, representing more than 19 Gigawatts of new offshore wind power.
    - BOEM announced that this will generate new port upgrade investments of more than $500 million, with cumulative demand of more than 7 million tons of steel and four to six specialized turbine installation vessels to be made in U.S. shipyards.
    - The Departments forecast offshore wind capacity of 110 Gigawatts by 2050.
- ***Progress of the First Three Commercial-Scale Offshore Wind Projects.*** As noted in the introduction, Ocean Wind joins Vineyard Wind and South Fork as one of three commercial-scale offshore wind projects that have entered the Environmental Impact Statement stage of development (and Vineyard Wind recently completed its EIS stage), with BOEM announcing a Notice of Intent to prepare an EIS for Ocean Wind.
- ***Strengthening Domestic Supply Chain, and DOE Funding.*** The Department of Transportation's Maritime Administration announced a Notice of Funding Opportunity for port authorities and other applicants to apply for $230 million for projects through the Port Infrastructure Development Program. The Department of Energy's Loan Programs Office (LPO) announced $3 billion in funding

through its **[Title XVII Innovative Energy Loan Guarantee Program]**, stating that the LPO is ready to partner with offshore wind and offshore transmission developers, suppliers and other financing partners. The LPO stated that to date it has provided $1.6 billion in support of offshore wind projects.

- ***R&D and Data Sharing.*** The National Offshore Wind Research and Development Consortium, created by the DOE and the New York State Energy Research and Development Authority (NYSERDA), announced the award of $8 million in grants to 15 offshore wind research and development projects. The Department of Commerce's National Oceanic and Atmospheric Administration announced a memorandum of agreement with Ørsted, the Danish wind developer, to share data in U.S. waters that the company leases, the first agreement of its kind.

In the context of Monday's announcement, you may find it useful to view the **webinar** on offshore wind that my colleagues at S&C and I presented some weeks ago.

We will continue to follow the Administration's pronouncements regarding these plans and will report further.

We will be happy to discuss any aspect of the plans or the offshore wind energy announcement. We look forward to engaging with you.

Best regards,

Christopher L. Mann

Sullivan & Cromwell LLP

125 Broad Street

New York, NY 10004

USA

+1 212 558 4625

mannc@sullcrom.com

Learn more about S&C's Infrastructure practice