



Process Over Promise:

The First 100 Days of the Biden-Harris Energy Policy

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Introduction

Forget the Paris Agreement. Forget the Iran deal.¹ These are bright, shiny objects that the Washington political class chases like grade school kids bee-swarmed a soccer ball. (We can't help it.)

It took the Allies nearly three months to re-enter Paris after the Normandy landings; President Biden will need just minutes to transmit the one-page "instrument of acceptance" to the United Nations and then wait thirty days for it ripen.² In reverse, Tehran released the U.S. Embassy hostages just minutes after President Reagan's inauguration in 1981; Secretary of State Blinken will probably need more than the 444 days those hostages were held before any new agreement is signed.³

	Paris Agreement	Iran Deal 2.0
Level of Difficulty	Low-to-None	High-to-Impossible
Significance	Low	High
Timeline	Minutes + 30 Days	N/A
Applicable Physics	Classical Mechanics	Chaos Theory

FIG. 1. THE OBLIGATORY MATRIX

Paris is easy, but doesn't really matter. Iran is difficult, but matters a great deal. Re-entry into Paris is a mechanical problem, driven by classical determinism applied to bureaucracy. It will definitely occur as soon as possible. A new deal with Iran, on the other hand, is riddled with the sensitive dependence on initial conditions and turbulent oscillations that characterize chaotic systems.⁴ The consequences of this complexity are enormous, unpredictable, and beyond the Biden-Harris administration's control. What else needs to be said?

This analysis sets aside the optical distractions (if not illusions) and explores a series of the more mundane decision points that will be thrust upon the incoming Biden-Harris team in the first 100 days (i.e., before May 1, 2021):

1. Submit the President's Budget Request for Fiscal Year 2022;
2. Schedule sales from the Strategic Petroleum Reserve;
3. Review liquefied natural gas export authorizations;
4. Develop the next five-year Outer Continental Shelf program; and
5. Consider small-scale refinery exemptions from the Renewable Fuel Standard.



These decision points lack the dramatics and theatrics of campaign pledges. They also implicate the key agencies involved with federal energy policy, including the Department of Energy, the Department of the Interior, the Environmental Protection Agency, and the Federal Energy Regulatory Commission. Various elements of the White House, most notably the Office of Management and Budget, which is the regulatory hub of the executive branch, are also involved.

The administrative state is driven by meetings, deadlines, and paperwork, the banality of bureaucracy – “the death of all sound work” – that paradoxically ensures so little actually gets done but without which nothing can get done.⁵

The first 100 days will be defined by process, not promises.

Decision Point 1: FY2022 Budget Request

By law, the President's Budget Request is due to Congress on the first Monday of February. For Fiscal Year 2022, that deadline is February 1, 2021. Presidents generally submit this mammoth document on-time (though it's timeliness gotten worse over the decades).⁶ Whether the "return to normalcy" implies a punctual budget submission depends on how long you think we've been abnormal.

Though the most salient feature of the Budget Request is typically the top-line numbers – the balance between function 050 (defense) and non-050 (everything else) – the real meat is found wedded to the bones of a process called "passback." In late November of the preceding year, the Office of Management and Budget (OMB) technically is supposed to "pass back" its responses to all the competing requests from the departments and agencies that comprise the executive branch. (But nothing happens if passback runs late.) Every request is placed under the microscope, including proposed regulatory changes, programmatic direction and funding, organizational structure, and legislative priorities.

The outcome of the OMB process may seem black and white: something is funded or not. But in reality there can be considerable gray area. For instance, what about deliberately underfunding a program so that it cannot succeed? Or proposing a new program for the purpose of "messaging" its inclusion as a priority, but not attaching any monetary figure to it? Or burying an unpopular activity into a popular program?

For the energy sector, the budget submission may very well be the roadmap to undoing President Trump's "Energy Dominance" agenda. It will influence the types of energy technologies that the government will support (e.g., the balance between solar and wind). By way of simple illustration, the Advanced Research Projects Agency-Energy at the Department of Energy (DOE) was an unpopular place for Trump political appointees to work because the administration's budget proposal called explicitly for its elimination. In contrast, there will be a line of Biden-Harris appointees desperate to get in.

Even when Congress enacts a spending bill that substantially differs from the President's Budget Request, the nuts and bolts of governance at work in the guts of passback (and all the associated arguments between agencies and the White House over specific line-items) are often too granular for Congressional scrutiny. Therefore, the Biden-Harris administration will govern, in part, through the budget process.

Decision Point 2: Strategic Petroleum Reserve

“Energy storage” has become synonymous with “advanced battery technology” because “energy” has long been confused with “electricity.” We already routinely access the immense stores of energy contained in pumped hydropower facilities and biomass (i.e., “biofuels” and “wood”), which comprise roughly two-thirds of total renewable energy consumption in the United States.⁷ And then there’s the 638.1 million barrels of crude oil in the Strategic Petroleum Reserve (SPR), the largest of its kind in the world. Under a standard conversion factor, this volume is roughly equal to solar and wind consumption in 2019.⁸

While promoting energy storage elsewhere, Congress, the Obama administration, and the Trump administration – in truly bipartisan, “whole of government” fashion – have been selling off the SPR to pay for various pet projects. In addition, one sale of up to \$450 million of crude oil is authorized at some point in FY 2021 or FY 2022, with the earnings earmarked for the modernization of the SPR itself. At \$50 per barrel, the modernization sale would comprise 9 million barrels.⁹ More importantly, Congress has legislated mandatory sales of 271 million barrels of crude oil in the FY 2017-2028 period.

Laws	P.L.	P.L.	P.L.	P.L.	P.L.	P.L.	P.L.
	114-74	114-94	114-255	115-97	115-123	115-141	115-270
Sales (million barrels)	58	66	25	7	100	10	5

FIG. 2. MANDATORY SPR SALES BY STATUTE
SOURCE: CONGRESSIONAL RESEARCH SERVICE

There is some flexibility baked into the laws, but at least 10 million barrels must be sold in FY 2021.¹⁰ Any significant alteration to the timeline will require Congressional acquiescence. To further complicate matters, the SPR modernization project itself is already behind schedule. The new DOE team will have to decide when the mandatory sales should occur, whether and when the modernization sale should occur, and the terms of those sales. For example, what if China wants to buy U.S. crude oil?



Decision Point 3: LNG Exports

Unlike crude oil, which can be pumped into a barrel, loaded into a pickup truck, and driven across the Turkish-Syrian border, natural gas requires expensive infrastructure to move around. The only way to move it across oceans is by turning it into liquefied natural gas (LNG), transporting it by carrier, and then regasifying it at the destination. Naturally, multiple federal reviews and authorizations are required for this enterprise.

In its first 100 days, the Biden-Harris administration will be confronted with the various measures instituted by President Trump that made such authorizations easier to obtain. Among the highlights of the “Energy Dominance” agenda, the Trump administration:

- Extended the terms of LNG export authorizations (for non-free trade agreement countries) to 2050;¹¹
- Expedited authorizations for small-scale LNG exports (e.g., containers to the Caribbean region);¹²
- Issued a policy statement reaffirming its support for authorizations and the unlikelihood any of them will ever be rescinded, a prospect that has always concerned U.S. allies in Northeast Asia and elsewhere;¹³ and
- Modified its environmental review procedures.¹⁴

DOE, under new leadership, could modify or revoke any of these policies. It could also pause authorizations until it has commissioned further studies to assess whether such exports are still “in the public interest.” DOE has, in fact, paused authorizations on several occasions. Every DOE macroeconomic study in the past – in 2012, 2015, and 2018 – has confirmed the public interest case, but a change in the terms of reference could easily yield a different conclusion. This is because the statute never defines “public interest.”

Finally, there are the projects themselves. The Federal Energy Regulatory Commission (FERC) has, up to this point, refused to consider “upstream” greenhouse gas emissions in its review of LNG export facilities. In layman’s terms, this means that FERC zeroes in on the project and sets aside the indirect impacts from the production of natural gas, which could occur hundreds of miles away. The Commission will come under even more political pressure to start evaluating the upstream environmental impacts.

The project pipeline of future LNG exports is already quite full. Nonetheless, even the existing slate of projects under review, under construction, and in operation will ensure the Biden-Harris team will be faced with demands for action in its first 100 days.

Decision Point 4: OCS Five-Year Plan

After a decade of glimmering hope for its boosters, the tides have turned against American Outer Continental Shelf (OCS) oil and gas production. From 2010 to 2019, federal oil production in the Pacific area fell by 79.5 percent and in the Alaska area by 64.1 percent. In the Atlantic area, it is nonexistent.¹⁵ The Gulf of Mexico remains lively, though the moratorium covering its Eastern zone has been extended until 2032.

Setting aside the question of economic viability – it is, after all, expensive to operate in deep water and especially in deep water that is also freezing – the Biden-Harris administration faces immediate questions about its offshore energy policy. Bipartisan interest in renewable development on federal lands and waters is probably at its peak and may yet intensify, particularly as state and federal governments launch Covid-19 economic recovery programs with an eye toward sustainability.

Scheduled Lease Sales	Region	Time Period
#257	Gulf of Mexico	2021
#258	Cook Inlet	2021
#259	Gulf of Mexico	2021
#261	Gulf of Mexico	2022

FIG. 3. THE FINAL PHASE OF THE 2017-2022 PROGRAM
SOURCE: DEPARTMENT OF THE INTERIOR

The law requires the promulgation of a five-year plan for oil and gas development in federal waters.¹⁶ This process takes years to complete. Currently, the Department of the Interior operates under the 2017-2022 Program because the Trump administration's 2019-2024 Program was effectively killed in court. The new team will have to get the ball rolling on development of a 2023-2028 Program very quickly. It will also have to make decisions about the four scheduled lease sales that remain in the 2017-2022 Program.

Additional moratoria, imposed by executive order, are also likely.



Decision Point 5: Small Refinery RFS Exemptions

Whenever Congress frets it might be doing something foolish by passing a new law, it adds “exemption” language that allows the executive department or agency in question to reverse course if necessary. Under legislation that mandated the Renewable Fuel Standard (RFS), the Environmental Protection Agency (EPA), in concert with DOE, can exempt “small refineries” (those with throughput of less than 75,000 barrels per day) from biofuel production requirements if applicants can demonstrate “disproportionate economic hardship.”¹⁷

	Petitions Granted	Petitions Denied
2011	24	13
2012	23	13
2013	8	18
2014	8	16
2015	7	17
2016	19	8
2017	35	1
2018	31	6
2019	<i>32 pending</i>	
2020	<i>9 pending</i>	

FIG. 4. HISTORICAL AND PENDING SMALL REFINERY PETITIONS
SOURCE: ENVIRONMENTAL PROTECTION AGENCY

Any refinery can submit a waiver application at any time. In theory, the EPA has ninety days to respond. In practice, recent court challenges and election-year politicking have prompted significant delays. Such petitions are highly politicized because the entire program is highly politicized. Without question, the new team at EPA will receive applications for small-scale refinery exemptions. Without question, the new team at DOE will conduct its economic analysis and provide the resulting recommendation to EPA. Without question, companies will lobby the Hill for assistance with their petitions.

The Biden-Harris team will be compelled to reach some sort of decision on the pending petitions specifically, and on exemptions policy more broadly. Deferring to the courts may work for a time, but the budget hearings cometh.



Conclusion

Hundreds of other decisions will need to be made, but these five examples are emblematic of the work that lies ahead. Meanwhile, the vast federal bureaucracy — responding to the directives of Congress and the regulatory superstructure — will present a series of choices to the incoming administration. These are decisions that must be made according to certain timelines, even if continued inaction is the decision. No sector will see more administrative bloodshed than energy.

The Biden-Harris team's ability to handle these relatively mundane issues will set the tone for the remainder of the first term. Though they lack the fanfare associated with jet-setting to Paris and Lausanne, boring governance and under-the-radar debates are the make-or-break of policymaking – and will make or break the new administration.

“Increasingly, the mathematics will demand the courage to face its implications.”
- Ian Malcolm¹⁸



Endnotes

- 1 In the halls of power, the Iran deal's Joint Comprehensive Plan of Action (JCPOA) literally is pronounced "jick-POH-ah." If anything replaces it, let's hope the acronym rolls off the tongue a bit better.
- 2 Incidentally, Paris was liberated "55 days ahead of schedule," according to Roland G. Ruppenthal, "Logistics and the Broad-Front Strategy" in *Command Decisions*, edited by Kent Roberts Greenfield (Center of Military History, Department of the Army, Pub 70-7, 1960), p. 423.
- 3 Sources differ on the precise number of minutes that elapsed. The final hours are recounted in Mark Bowden, *Guests of the Ayatollah: The First Battle in America's War with Militant Islam* (Grove City, 2006), pp. 575-588. Of note: "Only when the plane taxied down the runway and its wheels left the ground did the great weight of fear begin to lift for the fifty-two Americans on the plane. There was still some disbelief. Billy Gallegos [a sergeant in the Embassy's Marine Guard detachment] thought it entirely possible that the Iranians would let them take off and then hit them with a surface-to-air missile." (p. 586)
- 4 Consider David Ruelle, *Chance and Chaos* (Princeton University Press, 1991): "According to Newtonian mechanics, when we know the state of a physical system (positions and velocities) at a given time—let us call this the initial time—then we know its state at any other time." (p. 28) This analogy shouldn't be taken too far. Ruelle's discussion of chaos, as applied to economics, also applies to diplomacy with Iran: "The examples of chaos in physics teach us, however, that certain dynamical situations do not produce equilibrium but rather a chaotic, unpredictable time evolution. Legislators and government officials are thus faced with the possibilities that their decisions, intended to produce a better equilibrium, will in fact lead to wild and unpredictable fluctuations. The complexity of today's economics encourages such chaotic behavior, and our theoretical understanding in this domain remains very limited." (p. 85)
- 5 Albert Einstein, translated by Alan Harris, *The World As I See It* (John Lane the Bodley Head, 1935): "Perhaps I am over-pessimistic concerning state and other forms of communal enterprise, but I expect little good from them. Bureaucracy is the death of all sound work." (p. 79)
- 6 Adherence to the practice of timely submission began to buckle in the 1980s and then the dam broke completely in the 2010s. See Michelle D. Christensen, *The President's Budget: Overview of Structure and Timing of Submission to Congress* (R43163), Congressional Research Service (February 9, 2016).
- 7 In 2019, the United States consumed 2,563 trillion Btu of hydroelectric power and 4,924 trillion Btu of biomass, totaling 7,487 trillion Btu. Total renewable energy consumption was 11,332 trillion Btu in the same period. See EIA, *Monthly Energy Review* (November 2020), Table 10.1.
- 8 Ibid, Table A2. One barrel of crude oil translates to 5.698 million Btu. Multiplication by 638.1 million barrels yields 3,636 trillion Btu. For 2019, U.S. solar (1,018 trillion Btu) and wind (2,227 trillion Btu) consumption sum to 3,245 trillion Btu.
- 9 The CARES Act (P.L. 116-136) postponed the deadline for this sale.
- 10 Phillip Brown, *Energy and Water Development: FY2021 Appropriations* (R46384), Congressional Research Service (December 8, 2020), p 13.



11 DOE, *Extending Natural Gas Export Authorizations to Non-Free Trade Agreement Countries Through the Year 2050*, 85 FR 52237, August 25, 2018.

12 DOE, *Small-Scale Natural Gas Exports*, 83 FR 35106, August 24, 2018.

13 DOE, *Policy Statement Regarding Long-Term Authorizations To Export Natural Gas to Non-Free Trade Agreement Countries*, 83 FR 28841, June 21, 2018.

14 DOE, *National Environmental Policy Act Implementing Procedures*, 85 FR 78197, December 12, 2020.

15 According to the Bureau of Safety and Environmental Enforcement, the Alaska OCS region produced 1,337,999 barrels in 2010 and 479,711 barrels in 2019; the Pacific region produced 21,707,342 barrels in 2010 and 4,449,332 barrels in 2019; and the Gulf of Mexico region produced 566,628,383 barrels in 2010 and 692,638,496 barrels in 2019. Overall OCS production increased from 589,673,724 barrels in 2010 to 697,567,539 barrels in 2019, an increase due entirely to Gulf of Mexico production.

16 43 U.S.C. §1331-1356b (2018). See also *Five-Year Offshore Oil and Gas Leasing Program for 2019-2024: Status and Issues in Brief* (R44692), Congressional Research Service (August 6, 2019): “BOEM’s development of a five-year program typically takes place over two or three years, during which successive drafts of the program are published for review and comment.” (p. 1)

17 42 U.S.C. §7545(o) (2018).

18 Michael Crichton, *Jurassic Park* (Ballantine Books, 1990), p. 410.

