Roth: A victory for fossil fuels over renewables

By Jim Roth, Director and Chair of the Firm's Clean Energy Practice Group. This column was originally published in The Journal Record on November 13, 2017.

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At this juncture, it isn't shocking to read the new tax proposal and learn that it harms renewable energy.

The headlines immediately bifurcated the energy sector into winners (fossil fuels) and losers (renewables). Retention of many long-standing fossil fuel breaks and incentives were an unsurprising boon for oil and gas companies, while the phase-out of many energy efficiency-related investment tax credits have the green energy industry angry and activated, and rightfully so.

It is counterintuitive that the tax proposal injures wind so badly, since it is proven, efficient, and reliable, and complements well with natural gas as the least expensive power source(s). While logic can’t be tied to the attack on wind, politics can. The tax proposal keeps in line with the current administration’s efforts to favor fossil fuels, especially coal, no matter how dirty or expensive. Plus, the revenue yanked from wind incentives goes to fund the newly created corporate tax revenue hole, which the Congressional Budget Office estimates this past week is the largest part of the $1.7 trillion estimated the GOP plan adds to America’s debt.

Subtitle F (the proposal’s heading dealing with energy credits) inadvertently got the letter grade it deserved as it outright fails renewable energy. Under the plan, the $7,500 tax incentive on electric vehicles is eliminated. States that mandated goals for zero-emission vehicles did so with an expectation of the incentive. Not to mention EV car companies whose business projections are based on the existence of the tax credit and a chance to keep American car manufacturers competitive with the world.

This section also contains certain repeals of oil and gas incentives, too, namely, the repeal of tax credits for marginal wells. This is especially negative for Oklahoma as the age and extent of our historic oil and gas production means we still have a significant number of marginal wells at work here in Oklahoma. Since many of these are owned and operated by mom-and-pop companies, it seems the GOP draft favors today’s large corporations over small businesses, at least as it relates to oil and gas marginal wells.

Another less obvious way the plan helps oil and gas corporations and harms renewable energy developers is the latter’s reliance on tax equity investors. Larger exploration and production-companies will benefit from the new corporate tax rate of 20 percent, down from 35 percent. But the model for many renewable energy projects relies upon, among other things, tax equity financing. When tax exposure is lower, it could follow that there would be less interest in tax equity financing projects, of all kinds, and especially energy.

Nevertheless, I remain steadfast in my confidence for our state's and nation's diverse energy future. Of course this optimism is buttressed by the reminder that there are still forthcoming amendments, and this plan will not likely become the final law. The bill, as proposed, violates the "Byrd rule," a Senate reconciliation rule that, in part, allows senators to block legislation when it would considerably increase the federal deficit beyond a 10-year term.

So far, there are over a trillion reasons either of our two U.S. senators could block this draft and insist it be rewritten to help all forms of Oklahomans' energies. Stay tuned.

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