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Five For Five: How the APA Protected Offshore Wind (For Now)

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On December 22, 2025, the Bureau of Ocean Energy Management (BOEM) issued short and nearly identical lease suspension orders that halted construction on five utility-scale offshore wind projects off Virginia, New York, Rhode Island, and Massachusetts, alleging new and classified national security threats. These suspensions sparked an immediate wave of litigation as the affected developers sought court orders that would allow them to resume work and keep to their carefully scripted construction timelines. Six weeks later, the dust has settled on a clean sweep for the offshore wind industry: all five projects won injunctions from four different judges in three different jurisdictions, appointed by one Democratic and two Republican presidents. Now that all construction of these projects is back on track, what lessons can we learn from this episode?

The Suspension Orders

The December suspension orders were not the first time in the past year that BOEM has tried to disrupt an offshore wind project in active construction. Having suspended all new wind energy permitting in a day one presidential memorandum, BOEM then took action in April to issue a "stop-work order" against Empire Wind, an 812-megawatt (MW) wind farm that had just started construction outside of New York Harbor, based on undisclosed environmental concerns. While this order was reversed in the wake of a widely reported deal between the White House and New York Governor Kathy Hochul to support one or more pending gas pipelines, BOEM then issued a second "stop-work order" in August targeting Revolution Wind, a 704 MW project off the coast of Rhode Island that was 80% complete, based on "concerns related to the protection of national security interests." This time, the developer sued and obtained an injunction a month later[1] — an order the federal government elected not to appeal.

Several months later, BOEM issued orders requiring an indefinitely extendable 90-day pause on all construction activities not just for Empire Wind (now 60% complete) and Revolution Wind (now 87% complete), but also for three other projects in varying stages of completion:

- Vineyard Wind 1, an 800 MW project off Massachusetts that was 95% complete and generating electricity from 44 of its 62 turbines — turbines that, notably, were exempted from the suspension order;
- Coastal Virginia Offshore Wind (CVOW), a 2,600 MW project off Virginia that was almost 70% complete; and
- Sunrise Wind, a 924 MW project off New York that was approximately 45% complete.

BOEM stated that this wave of suspensions was based on an "additional assessment" provided to it by the Department of War (DoW) "regarding the national security implications of offshore wind projects … including the rapid evolution of relevant adversary technologies."

The Motions for Injunctive Relief

Throughout the following month, each of the developers filed lawsuits and subsequent motions seeking to stay or enjoin the December suspension orders.

Project	**Caption**	**Judge (appointed)**
Coastal Virginia Offshore Wind	*Va. Elec. & Power Co. v. U.S. Dep't of the Interior*, No. 25-cv-830 (E.D. Va., filed Dec. 23, 2025)	Walker (Biden)
Revolution Wind	*Revolution Wind, LLC v. Burgum*, No. 25-cv-02999 (D.D.C., filed Jan. 1, 2025)	Lamberth (Reagan)
Empire Wind	*Empire Leaseholder, LLC v. Burgum*, No. 26-cv-00004 (D.D.C., filed Jan. 1, 2026)	Nichols (Trump)
Sunrise Wind	*Sunrise Wind LLC v. Burgum*, No. 26-cv-00028 (D.D.C., filed Jan. 6, 2026)	Lamberth (Reagan)
Vineyard Wind	*Vineyard Wind 1, LLC v. U.S. Dep't of the Interior*, No. 26-cv-10156 (D. Mass., filed Jan. 15, 2026)	Murphy (Biden)

While the circumstances of each specific project varied, the legal arguments made by each developer in support of preliminary injunctive relief were similar. On the merits, each of the developers detailed through declarations the rigorous process by which BOEM and DoW considered the projects' national security concerns and imposed mitigation measures prior to approval. They each argued that BOEM's suspension orders were (a) arbitrary and capricious under the Administrative Procedure Act for failing to provide a satisfactory explanation for the action, failing to adequately explain the agency's change in position, and failing to account for developers' reliance interests; and (b) exceeded BOEM's authority under the Outer Continental Shelf Lands Act (OCSLA), its regulations, and the terms of developers' leases. Additionally, all but one of the developers asserted (c) that the suspension orders deprived them of a property right without due process in violation of the Fifth Amendment. Each of the developers also described the context in which the suspension orders were issued, including statements made by the president and Interior Secretary Doug Burgum expressing an intent to shut down the offshore wind industry, as well as prior agency actions against projects and the industry as a whole — many of which other courts have struck down as arbitrary and capricious.

On irreparable harm, each developer provided declarations detailing the daily financial hit they were taking from the lease suspension, the ripple effects that the delay had on their respective construction schedules, the existential project risk if delays caused them to lose access to critical construction vessels, and (in some instances) the possibility of losing project financing. In many cases, the developers also buttressed their balance-of-equities and public-interest arguments through the filing of amicus briefs from labor groups who faced job losses if the projects failed and grid operators who were relying on the energy from these projects. Several states also filed their own suits that were then joined with the developers' suits.

In its briefing and at oral arguments, the government offered for *ex parte,in camera* review a sealed DoW

declaration containing the purported national security evidence in each of the courts where the order was challenged. The government also argued that matters of national security should be accorded nearly absolute deference — and that they should essentially override all other considerations when deciding whether a preliminary injunction is warranted under the four-pronged test in *Winter v. Natural Resources Defense Council Inc.*, 555 U.S. 7 (2008). The government also vigorously attacked the developers' claims of irreparable harm, arguing that the harms asserted were purely economic and suggesting that the developers could eventually be made whole by suing the government for breach of contract under the Tucker Act.

The Preliminary Injunction Decisions – Common Threads

All five judges ruled decisively in favor of offshore wind developers and enjoined the suspension orders. Their opinions, all delivered from the bench, had the following throughlines:

- **National Security:** Each of the judges noted logical flaws in the government's national security claims that tended to undermine the purported seriousness of the government's concerns. Several judges expressed confusion that while the purported national security risks related to the operation of the turbines and not their construction, the suspension orders did the exact opposite: pausing construction while allowing all operating turbines to keep spinning. Judge Murphy in his Vineyard opinion labeled this discrepancy as "irrational." Several judges noted the government's unwillingness to even discuss the potential for mitigation with developers, each of whom submitted declarations describing their substantial experience mitigating radar interference concerns in offshore wind projects. Several judges made adverse inferences from the one-month gap between the date DoW briefed BOEM on the purported national security concerns and the date BOEM issued suspension orders. And while the judges were each careful not to reveal the contents of the classified information in open court, Judge Walker in his CVOW opinion noted inconsistencies between the sealed and unsealed portions of the government's evidence.
- **Judicial Restraint:** All of the judges grounded their opinions in the APA alone and declined to rule on whether the suspension orders violated OCSLA or the Fifth Amendment. Even within their APA rationales, the judges took great pains to clarify that their rulings that the government had acted arbitrarily and capriciously were based only on the evidence proffered by the government and the developers' sworn declarations. Many of the rulings were explicit that they were *not* based on political pretext or evidence of this administration's animus toward offshore wind or renewable energy generally.
- **Lack of Particularity:** Several judges found it significant that the suspension orders and supporting declarations were functionally identical for each of the five projects, and contained few indicia that BOEM had considered the specific circumstances of each of the projects in deciding to suspend them. At least one judge noted the untailored nature of the order.
- **Harms:** The courts grounded their findings of irreparable harm on the full gamut of evidence offered by the developers, rather than narrowing in on one decisive factor. This meant considering the size of the daily financial losses, the risk of losing access to specialized vessels, and potential harms to project finance. For the CVOW project in particular, Judge Walker also noted that Dominion Energy would suffer reputational harm because Virginia ratepayers were going to pay most of the project's costs whether or not it was completed.

Lessons Learned … and What Comes Next

For companies building controversial infrastructure projects that are likely to be the subject of litigation, these five offshore wind suspension rulings offer several key lessons. First, the decisions underscored the importance of a robust and persuasive administrative record — and the vulnerability of governmental actions that lack it. The recent suspension orders rested on thin records that were not bespoke for each project, and the judges repeatedly emphasized that they were limited only to considering the record that was before the agency at the time a decision was made. By contrast, the federal government has maintained a strong record of prevailing in litigation brought

by third-party opponents of offshore wind projects, challenging BOEM's pre-2025 approvals of those projects' construction and operations plans (COPs). Those wins, which involved many of the same projects that were the subject of the December 22 suspension orders, were largely due to the fact that BOEM conducted years of environmental analysis and public comment before approving the projects' COPs.[2]

Second, it is imperative that project developers keep detailed records of their interactions with permitting agencies and other regulators, as well as their internal compliance and finances, so that they can be prepared to offer robust declarations in response to either adverse governmental actions or citizen suits. Pivotal to offshore wind developers' victories was their thorough documentation of their engagement with various federal agencies on national security issues, as well as the current and prospective financial losses suffered as a result of the suspension orders.

Third, these cases highlight the importance of regulatory certainty in infrastructure investments — as well as the power of the preliminary injunction in achieving rapid and meaningful results. The five offshore wind developers' reliance on final federal permitting decisions, along with billions of dollars in investment, held fast thanks to the APA and the strong record backing the project approvals.

But the five rulings also leave serious questions unanswered. While it is noteworthy that each of the five judges concluded that an insufficiently supported assertion of national security interests cannot override the protections of the APA, it is unknown whether the outcome would have been the same if the administration had provided a more detailed, site-specific analysis. The cases also do not address whether OCSLA allows offshore energy projects to be suspended at any time for national security reasons, or if the statute and lease provisions place guardrails around that authority. The answer to this question could have grave implications in future administrations for offshore oil and gas production, as well as nascent offshore industries like deep seabed mining and carbon capture and sequestration.

Moreover, these rulings only protect these projects from *these orders*, and not possible follow-on orders that may rely on new rationales. Thus far, judges in these matters have only been willing to rule on the issues directly before them, and have been unwilling to act prospectively to exercise supervision over future adverse agency actions.

Overall, the cases demonstrate that the protections provided by the APA are meaningful. Developing a robust record of agency (and applicant) decision-making enables those protections to be effectuated should challenges to agency approvals arise in the future.

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[1] *Revolution Wind, LLC v. Burgum*, 25-cv-02999 (D.D.C. Sep. 22, 2025) [ECF No. 36].

[2] *See, e.g., Seafreeze* Shoreside*, Inc. v. U.S. Dep't of the Interior*, 123 F. 4th 1 (1st Cir. 2024); *Committee for a Constructive Tomorrow v. U.S. Dep't of the Interior*, No. 1:24-cv-00774, 2024 WL 2699895 (D.D.C. May 24, 2024); *Save Long Beach Island, Inc. v. U.S. Dep't of Commerce*, 25-cv-02214, 2025 WL 2996157 (D.D.C. Oct. 24, 2025); *Green Oceans v. U.S. Dep't of the Interior*, 24-cv-00141, 2025 WL 973540 (D.D.C. April 1, 2025).

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