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Renewables in the Crosshairs: DOI and DOT Announce Numerous New Anti-Wind and Solar Orders and Policies

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During the week of July 28, the Trump administration unleashed a new burst of actions aimed squarely at blocking wind and solar energy with the announcement of two new secretarial orders (SO) and three new policies by the Department of the Interior (DOI), plus one from the Department of Transportation (DOT). These latest measures follow on the heels of the recent internal directive from DOI Deputy Chief of Staff for Policy Gregory Wischer implementing three new levels of political review for a comprehensive list of approvals, consultations, and interim steps in the permitting processes for wind and solar projects with a nexus to DOI's regulatory authority. Although couched in terms of curbing "preferential treatment" for wind energy, the measures go well beyond any leveling of the playing field, instead significantly *disadvantaging* wind and solar — which the DOI refers to as "foreign-controlled energy sources" — compared to other sources of energy or uses of public lands.

DOI Announcements

On July 29, the DOI announced a flurry of new policy measures that Secretary Doug Burgum characterized as representing "a commonsense approach to energy that puts Americans' interests first," "leveling the playing field in permitting support" in pursuit of "responsible energy growth that works for every American." These policy measures include the following:

- *Restoring Congress's Mandate to Consider All Uses of Our Public Lands and Waters Equally.* DOI announced it would "consider withdrawing onshore areas with high potential for wind energy development to ensure compliance with legal requirements for multiple use and sustained yield of public lands," although it is currently unclear what mechanism DOI would use and whether it would affect issued wind energy rights-of-way. It also indicated that it would terminate previously designated offshore Wind Energy Areas, which are areas that have been pre-approved for offshore wind lease auctions following an extensive public input and deconfliction process. The following day, on July 30, Bureau of Ocean Energy Management (BOEM) did just that, formally rescinding all designated Wind Energy Areas on the U.S. Outer Continental Shelf.

- *Enhancing Stakeholder Engagement for Offshore Wind Development*. DOI will strengthen its guidance "to ensure more meaningful consultation regarding offshore wind development, especially with tribes, the fishing industry, and coastal towns," to support "greater collaboration, transparency, and respect for community and regional priorities."

- *Reviewing the Consequences of Developing Wind Turbines on Migratory Birds.* DOI intends to conduct "a careful review of avian mortality rates" at wind projects to determine whether such impacts qualify as "incidental" under the Migratory Bird Treaty Act (MBTA). Earlier this year, the DOI solicitor issued an M-Opinion

reinstating the previous Trump administration's interpretation that the MBTA does not apply to incidental take, an interpretation that actually eliminated a significant regulatory concern for the wind industry. There is ample data establishing that wind farms present minimal risk to migratory birds, so an unbiased review of avian mortality data from wind farms should identify no widespread concern. However, the DOI seems to be telegraphing a legal strategy to use the MBTA to block wind energy, while avoiding a conflict with the M-Opinion by classifying avian mortality at wind farms as intentional take. Because the MBTA is a strict liability criminal statute, this could result in the criminalization of the operation of wind farms, representing an existential threat to the industry and setting a dangerous precedent that could selectively be applied to other industries in the future.

- SO 3437, *Ending Preferential Treatment for Unreliable, Foreign-Controlled Energy Sources in Department Decision Making*. The DOI announced the issuance of a new SO that implements the provisions of the recent Executive Order (EO) 14315, *Ending Market Distorting Subsidies for Unreliable, Foreign-Controlled Energy Sources* (July 7, 2025). That EO directed the DOI to identify the existence of any "preferential treatment" toward wind and solar facilities, in comparison to dispatchable energy sources, in any department regulations, guidance, policies, or practices, and to make the necessary revisions to eliminate such preferences. Importantly, it also touches on key provisions of the January 20, 2025, Wind Presidential Memorandum (PM). SO 3437 calls out the Biden administration's "arbitrary and preferential treatment towards expensive, unreliable, foreign-controlled intermittent energy sources like wind and solar power." It provides several examples of such alleged preferential treatment, including reduction in BLM rents and capacity fees by roughly 80% below fair market value for wind and solar projects, and that "[p]ublic outreach, news releases, and website communications prominently featured intermittent sources of energy over much-needed baseload power."

The specific directives under SO 3437 include:

1. Within 30 days — *i.e.*, by the end of August — each assistant secretary must conduct a review of any regulations, guidance, policies, and practices within their jurisdiction, including but not limited to the following five categories: (i) land use and site authorizations; (ii) environmental and wildlife permits and analyses; (iii) processes related to tribal and native lands; (iv) commercial and financial authorizations; and (v) other actions and authorizations such as the following. The SO provides examples for each of these categories. With respect to environmental and wildlife permits and analyses, they include:

Environmental analyses (EA and EIS under the National Environmental Policy Act (NEPA)).
Biological assessments and biological opinions (including for marine mammals and fisheries).
Incidental take permits.
Programmatic Eagle take permits.
Migratory Bird Treaty Act compliance consultation.
Cultural resources consultations.
Visual resource management analyses.

Raptor nest removal permits are also included among the other actions and authorizations category. Following this review, a report describing the findings and recommendations regarding actions the DOI should take to eliminate preferential treatment toward wind and solar development must be submitted to the secretary. This directive comes on the heels of a recent proposals to rescind the definition of harm under the ESA and request for comments for section 10 permit revisions.

2. Within 45 days of order — *i.e.*, by September 12 — the assistant secretary for land and minerals management, in coordination with other agencies as appropriate, must prepare and submit a report that describes and provides recommendations regarding the following:

Trends in environmental impacts from onshore and offshore wind projects on wildlife, especially birds, marine mammals, and fisheries.
Economic costs associated with the intermittent generation of electricity.
Effect of taxpayer-funded subsidies on artificially propping up the wind industry.
Impacts that the development of offshore wind projects that have received a COP from the DOI may have on military readiness.

This requirement tracks closely the "comprehensive assessment and review of Federal wind leasing and permitting practices" President Trump required the DOI and other federal agencies to undertake back in January under its Wind PM (Section 2(a)). The Wind PM put a pause on issuing "new or renewed approvals, rights of way, permits, leases, or loans for onshore or offshore wind projects" pending the completion of such a comprehensive assessment, without putting a timeline for the assessment. We should now expect this assessment by mid-September, although it is not clear if it is going to be made public. Another follow-up requirement from the Wind PM is a review of the Lava Ridge Wind Project record of decision and the submittal of a brief report describing BLM's recommendation on the need for a new, comprehensive analysis, the details on how to conduct such analysis, including a schedule. The Wind PM had placed a temporary moratorium on that project.

3. Also within 45 days of order — *i.e.*, by September 12 — the solicitor, in coordination with the attorney general and other agencies, must review pending litigation challenging wind or solar project approvals. Where appropriate, the solicitor may recommend remanding approvals for reconsideration to ensure decisions are legally and factually supported and consistent with either the most recent judicial interpretation of the law or the department's interpretation of the best reading of the applicable law.

Finally, to close out an already busy week, on August 1, DOI released SO 3438, which directed that NEPA analyses for wind and solar projects on federal lands or on the Outer Continental Shelf should consider "a reasonable range of alternatives that includes projects with capacity densities meeting or exceeding that of the proposed project." The order then states that "the Department shall only permit those energy projects that are the most appropriate land use when compared to" those alternatives. The order makes no secret that this analysis is intended to disadvantage wind and solar projects, stating that "[b]ased on common sense, arithmetic, and physics, wind and solar projects are highly inefficient uses of Federal lands." By way of example, the order compares the capacity density of an offshore wind farm with the density of an advanced nuclear power plant.

This approach seems to be in contrast with this administration's efforts to streamline NEPA requirements and its emphasis on NEPA being a purely administrative review. It establishes (1) the types of alternatives that must be considered, including alternative types of energy projects; (2) a requirement that capacity density be assessed as part of the alternatives analysis; and (3) a mandate that the highest capacity density alternative must be selected. This would be an unprecedented approach to NEPA implementation to say the least, and it is likely that DOI's efforts to implement this SO could face significant legal challenges.

DOT Press Release

Also on July 29, in a press release titled "President Trump's Transportation Secretary Sean P. Duffy: Biden-Buttigieg Ignored the Dangers of Wind Turbines Near Railroads & Highways, Put Climate Religion Ahead of Safety ," the DOT calls on Congress "to investigate why safety recommendations were dropped, the depth of the Biden-Buttigieg scheme." The release, which has been updated several times since its initial issuance, alleges that the

Biden administration “blatantly ignored engineers who warned of the danger of constructing wind turbines near railroads and highways.” The safety concerns at issue relate to potential obstruction of radio communications and signal reception from wind turbines. As evidence of the “scheme,” the release references the DOT’s reversal of initial concerns raised in 2023 regarding a proposed wind farm with turbines to be located within a one to three mile boundary of a rail corridor carrying high speed passenger traffic and freight. In 2024, the DOT withdrew its concerns after internal review did not identify any radio frequency blockage. The release claims that an internal review identified 33 projects where the original safety recommendation was rescinded. Citing that review, and a new DOT-commissioned study that concludes that wind farms “could potentially obstruct radio communication,” the release announces that the DOT will recommend a minimum 1.2-mile setback for turbines built near highways and railroads.

Conclusion

While there was initial uncertainty about whether the Trump administration’s anti-wind sentiments were limited to offshore wind, there can now be no doubt that they were not, and that the animus is not even limited to wind, with solar energy also a target of many of these recent policies. These new pronouncements have profound implications for the wind and solar industries, and portend new and even more consequential policies in the near future. In the meantime, advancing projects through the permitting process will require creative new strategies to overcome what has become an effective federal moratorium on wind and solar energy projects. For questions or to discuss these latest developments, we encourage you to contact Troutman Pepper Locke’s environment and natural resource attorneys.

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