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As the Wind Turbine Turns: When Can a Federal Agency Change Its Mind?

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Since its inauguration in January 2025, this federal administration has been engaged in a broad effort to change course on many fronts, including environmental and energy policy. Two district court decisions and a decision by the Secretary of the Interior involving development of offshore wind energy provide an opportunity to consider whether any law constrains agency discretion to implement a new administration's policies, even when that would involve a reversal of prior decision making.

The Biden administration sought to encourage development of wind and solar electricity generation. The Trump administration has been hostile to renewable energy from the outset. On Inauguration Day, the president issued a presidential memorandum withdrawing all areas of the Outer Continental Shelf not yet under lease from new leasing for offshore wind development and directing the federal permitting agencies to withhold permits or permit renewals for any offshore or onshore wind projects until after completion of a "comprehensive assessment" of the impacts of those projects. See 90 Fed. Reg. 8363 (Jan. 29, 2025)("Wind Memo"). The pertinent agencies immediately issued an order imposing a 60-day moratorium on permit consideration for wind projects (the "Wind Order") and have not processed a permit since.

The Wind Memo further called for evaluation of options to withdraw or to terminate existing leases. The principal regulator for offshore wind projects—the Bureau of Ocean Energy Management (BOEM)—went a little further by calling for reexamination of certain already issued approvals. BOEM's principal umbrella approval for an offshore wind project is known as a construction and operation plan (COP), and BOEM has announced the intention to reconsider certain COPs.

Last month, a district court vacated the Wind Order because it was arbitrary and capricious under Section 706(2) of the Administrative Procedure Act, 5 U.S.C. Section 706(2). See *State of New York v. Trump*, No. 25-cv-11221-PBS (D. Mass. Dec. 8, 2025). However, a week later another district court denied a wind developer's motion for a preliminary injunction against reconsideration of its COP for lack of ripeness. See *Mayor and City Council of Ocean City, Maryland v. United States Department of the Interior*, Civil Case No. SAG-24-03111 (D. Md. Dec. 15, 2025). A week after that, the Department of the Interior announced it was "pausing ... the leases for all large-scale offshore wind projects under construction in the United States" for national security reasons. See "The Trump Administration Protects U.S. National Security by Pausing Offshore Wind Leases," (Dec. 22, 2025).

So what is the legal rule, if any, limiting an agency's flip-flopping to effectuate a new administration's policy positions? Elections surely have consequences, and any rule that limits a new administration from implementing its policies mutes those consequences. One's view of whether that is a good or a bad thing should not turn on one's view of the policy merits of any given decision. The same rule will apply after the next election as well, so limits on changes in one direction will also limit later changes in the other.

As Judge Patti B. Saris pointed out in the *State of New York* case, real doubt exists over whether a decision by the president taken under authority granted by Congress to the president, and not an agency, is subject to review under the Administrative Procedure Act. In *Trump v. Orr*, No. 25A319 (U.S. Nov. 6, 2025), the U.S. Supreme Court issued an emergency docket stay of the district court's injunction against a policy requiring passports to display the biological sex of the holder assigned at birth. The court seemed to conclude that the governing statute, 22 U.S.C. Section 211a, authorized the president to establish rules for

issuing passports and so the State Department was likely to prevail on the merits that it had no discretion not to implement that policy.

Saris distinguished the Wind Order from the Wind Memo; the former was issued by the pertinent agencies and the latter by the president. Governing precedent, she reasoned, made an agency exercise of discretion delegated to the agency (as opposed to the president) reviewable under the APA.

One cannot know what the Supreme Court will do with that distinction. For example, the Comprehensive Environmental Response, Compensation and Liability Act delegates most authorities to the president, who has further delegated them to various federal agencies. By contrast, Congress delegated most authorities under the Clean Air Act to the administrator of the Environmental Protection Agency. If the president adopts a policy by presidential memorandum or executive order, it is not clear why EPA's action implementing that policy would be unreviewable if it altered a CERCLA remedy selection or a provision of the National Contingency Plan, but reviewable if it changed a new source performance standard or revoked a permit.

In any event, the offshore wind actions other than the withdrawal of the Outer Continental Shelf from leasing are characterized as moratoriums or pauses. The government took the position that a temporary pause does not work a sufficient injury to confer standing on anyone to challenge it, nor is it sufficiently permanent to constitute final agency action.

But moratoriums have been held to work a sufficient injury to confer standing and to count as final agency action. So, for example, the moratorium on natural gas development in the Delaware River Basin pending development of regulations was reviewable. See *Wayne Land & Mineral Group v. Delaware River Basin Commission,* 894 F.3d 509 (3d Cir. 2018). Similarly, a moratorium on access to severed oil, gas, and mineral interests in the Allegheny National Forest pending completion of a forestwide environmental impact statement was reviewable. See *Minard Run Oil v. U.S. Forest Services*, 670 F.3d 236 (3d Cir. 2011).

Substantively, the *State of New York* court recognized that new administrations may change policy decisions. They must, however, acknowledge that they are doing so and give reasons. If the change in position depends upon a change in factual determinations, rather than mere policy shifts, then the agency's exercise of discretion will be subject to more scrutiny. So too if the agency is affecting substantial reliance interests.

Because the agencies offered no reason for the Wind Order other than the Wind Memo, and the Wind Memo offers no basis or specificity for its factual recitations, the Wind Order was contrary to law. Similarly, the Wind Memo did not consider reliance interests at all.

By contrast, in Ocean City, BOEM announced that it was reconsidering the wind developer's COP—its permit, in effect. However, the existing COP remained in force. The wind developer could have proceeded without enforcement risk, although it, of course, stopped work because of the risk of an even larger loss should BOEM later terminate the COP on review. Nevertheless, that made the decision unripe for review and deprived the developer of standing.

The Dec. 22 announcement pausing construction on five projects for national security reasons presents an even more complicated case. On the one hand, DOI cites unclassified (but unspecified) reports that movement of large turbine blades cause radar "clutter" interfering with defense systems. But DOI also relies on classified reports from the Department of War. Can there be a valid reason to require someone to stop building a multi-billion dollar project already underway if the reason is secret? We shall see.

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