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Recent Executive Orders Affecting the Energy Industry

Client Alerts

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On April 8th and 9th, President Trump issued five executive orders, a presidential proclamation, and a presidential memorandum that directly impact the energy industry.

This alert summarizes the key provisions and takeaways from these actions.

The Use of Emergency Authority to Address Electric Reliability

The Strengthening the Reliability and Security of the United States Electric Grid executive order seeks to address grid reliability risks resulting from increased electricity demand through use of an emergency provision of the Federal Power Act (FPA), Section 202(c).

- Section 202(c) allows the Department of Energy (DOE) to order the continued operation of facilities during emergencies.
- In the order, DOE is first directed to "streamline, systemize, and expedite" the department's processes for issuing orders under Section 202(c).
- Next, DOE is directed to develop a methodology for analyzing reserve margins across regions of the nation's power system and identifying specific resources in each region that are critical to system reliability. The methodology will be published on DOE's website within 90 days and must also include mechanisms for ensuring critical resources stay online, including but not limited to use of Section 202(c) authority.
- Finally, DOE is instructed to employ Section 202(c) to prevent resources with more than 50 MW of nameplate capacity from either leaving the bulk power system or converting their fuel source if such a change would result in a reduction of generating capacity.
- This order's upshot is an enhancement of DOE's role, directing DOE to preserve certain plants that otherwise might have retired.

Directive to "Zero-Base" Energy Regulations

The executive order titled Zero-Based Regulatory Budgeting to Unleash American Energy aims to incorporate sunset provisions into regulations governing energy production, with the purpose of compelling agencies to "reexamine their regulations periodically to ensure those rules serve the public good."

- The order applies to numerous agencies with regulations affecting the energy industry, including FERC, EPA, and DOE. The executive order targets regulations issued under many statutes, including the Federal Power Act, the Natural Gas Act, and the Energy Policy Act of 2005.

- The order directs that for each covered regulation, the applicable agency must issue a sunset rule, to be effective by September 30, 2025, adding a conditional sunset of one year after the effective date for existing regulations, subject to an extension process (described below).

- Agencies must offer a notice and comment period regarding the costs and benefits of each regulation prior to the expiration date. Following notice and comment, a rule can be extended if the agency finds an extension is warranted. Extensions can be granted as many times as appropriate, but never for longer than five years into the future.

- New regulations under the covered statutes must include a conditional sunset date not more than five years in the future. OMB may exempt a new regulation from the requirements if it has a "net deregulatory effect."

Although this provision aims to benefit industry by promoting deregulation, it also introduces substantial uncertainty by requiring that even foundational regulations aimed to assure stability have a sunset date; it may also create opportunities for various parties to press for changes. Litigation may challenge the insertion of these sunset clauses, and their effect will depend on how agencies approach them.

Attorney General Directed to Target State Environmental Laws

The executive order titled Protecting American Energy from State Overreach directly targets state actions that that the administration sees as barriers to the development and deployment of energy resources.

- The order references New York's recently enacted "climate superfund" law, a similar Vermont law, California's cap and trade laws, States that delay review of permit applications to produce energy and thereby create de facto barriers to entry, and state-law causes of action that seek redress for climate-change related harms under nuisance or tort theories.

- The order directs the Attorney General to identify state and local laws and regulations that "burden" the use of domestic energy resources and may be "unconstitutional, preempted by Federal law, or otherwise unenforceable."

- The Attorney General is directed to expeditiously take all appropriate action to stop the enforcement of or continuation of civil action under such laws. Several such laws have been challenged and upheld, but this order could presage new challenges.

Direction for Agencies to Reduce Anti-Competitive Regulatory Barriers

On April 9th, President Trump issued an executive order titled Reducing Anti-Competitive Regulatory Barriers. The order's purpose is to commence a process for "eliminating anti-competitive regulations."

- Agencies are directed to, in consultation with the Federal Trade Commission and the Attorney General, complete a review of all regulations subject to their authority and identify those that have anti-competitive results (including but not limited to those regulations that "create, or facilitate the creation of" de facto and de jure monopolies or those that "create unnecessary barriers to entry for new market participants").

- Within 70 days of the order, agency heads are directed to provide the FTC and the Attorney General a list of identified regulations. Agency heads are also directed to supply a recommendation regarding recession or modification of these regulations in light of their supposed anticompetitive effects.

- Within 90 days of receipt of the above list, a consolidated list of regulations that warrant recession or modification must be provided to the director of OMB. The OMB director is required to consult with agency heads, the Charmain of the FTC, and the Assistant to the President for Economic Policy—who can also add their own regulations that they believe merit rescission or modification and then decide whether to incorporate the proposed recessions or modifications in the Unified Regulatory Agenda developed pursuant to a February 19th executive order. The Unified Regulatory Agenda identifies the significant regulatory actions that agencies plan to take.

- Stakeholders in the energy industry are likely to contest which regulations belong on the list.

Presidential Memorandum Directing the Repeal of "Unlawful" Regulations

The President issued a memorandum in follow up to the February 19th executive order instructing identification of unlawful or potentially unlawful regulations and development of plans to repeal such regulations.

- The memorandum instructs agencies to prioritize review for compliance with recently issued Supreme Court decisions such as *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024) and *West Virginia v. EPA*, 597 U.S. 697 (2022).

- In effectuating repeals of regulations, agencies are instructed to do away with notice and comment periods when consistent with the "good cause" exception in the Administrative

Procedure Act—though the order suggests that the good cause exception will sometimes apply.

- Litigants will likely challenge whether particular regulations in fact conflict with these decisions, as well as whether agencies permissibly dispensed with notice and comment.

Provisions Directly Focused on the Coal Industry

The order partially titled Reinvigorating America's Beautiful Clean Coal Industry contains various provisions aimed at directly supporting domestic coal production and generation.

- The order adds coal to the definition of "mineral" contained in the March 20th, 2025 executive order on mineral production. This entitles coal to the benefits for "minerals" contained in that order, which include expedited permitting and increased facilitation for investment.

- The order also directs the Secretary of the Interior to determine whether coal or metallurgical coal that is used in the production of steel should be added to the department's "Critical Minerals List." Placement on that list results in increased governmental support and funding for production.

- The Secretary of the Interior, the Secretary of Agriculture, and the Secretary of Energy are directed to submit a consolidated report within 60 days, identifying existing coal reserves on Federal lands and identifying potential impediments to mining those resources along with proposed solutions. Once existing resources are identified, coal related activities are to be prioritized on lands where those resources exist.

- The Secretary of the Interior is directed to acknowledge the end of the "Jewell Moratorium," which paused coal leasing on federal lands in 2016.

- Agencies are directed to identify to the Council on Environmental Quality within 30 days, any existing or potential exclusions under the National Environmental Policy Act with the aim of increasing production or export of coal. If successful, this would remove the statutory requirement for environmental evaluations for some actions.

- Several agencies are directed to conduct a review of their regulations pursuant to the order to ensure they are aligned with administration priorities, including EPA, Interior, DOE, Treasury, and the Department of Transportation.

- The order also requires certain agencies to create studies and action plans to support coal development, including to support data centers and exports.

In addition, a presidential proclamation also issued on April 8th extends the deadline for some facilities to comply with updates to the Clean Air Act Mercury and Air Toxics Standards (MATS) for certain facilities (likely some subset of coal-fired generation plants). This two-year extension was

premised on the statement that emission controls for these facilities are not currently commercially available and requiring controls would impact national security.

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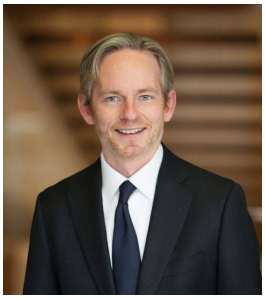

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