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Seventeen States and The District of Columbia Sue to Overturn the Trump Administration's Plan to Block Wind Energy Development

On May 5, 2025, 17 states and the District of Columbia filed suit in federal court in Massachusetts to overturn the Trump Administration's actions that are designed to stop wind energy development. Alleging that the actions have "stopped most wind energy development in its tracks," the complaint focuses on a January 20, 2025, presidential memorandum, "Temporary Withdrawal of All Areas on the Outer Continental Shelf From Offshore Wind Leasing and Review of the Federal Government's Leasing and Permitting Practices for Wind Projects."

The complaint states in part:

> [Plaintiffs] bring this action to challenge President Trump's unlawful Presidential Memorandum halting federal approvals of wind-energy development and to enjoin federal agencies' implementation of that Memorandum.
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> On January 20, 2025, President Trump issued a Presidential Memorandum that, *inter alia*, categorically and indefinitely halted all federal approvals necessary for the development of offshore- and onshore-wind energy, pending an amorphous, redundant, extra-statutory, and multi-agency review of unknown duration. *Temporary Withdrawal of All Areas on the Outer Continental Shelf from Offshore Wind Leasing and Review of the Federal Governments' Leasing and Permitting Practices for Wind Projects*, 90 Fed. Reg. 8363 (Jan. 29, 2025) (Wind Memo).
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> Although the States do not concede the legality of any aspect of the Wind Memo, this case challenges Section 2(a)'s halt on federal approvals for wind-energy projects (the Wind Directive).

Violations of the Administrative Procedure Act (APA)

The complaint outlines four factors alleging that the actions are arbitrary and capricious pursuant to the APA.

1. The so-called "Wind Directive" provides no "reasoned explanation for its categorical and indefinite halt of wind energy development."
2. There is no detailed justification to explain the abrupt change in federal policy.
3. The actions "took no account of the serious reliance interests the states have developed" based on long-running support of wind energy development.
4. The Wind Directive is "internally inconsistent" and contradicts President Trump's Energy Emergency Order and "other contemporaneous executive actions calling for increased domestic energy production and curtailed environmental review."

Violations of Other Federal Statutes

The complaint also alleges that the Wind Directive is contrary to and in excess of authority under the Clean Air Act, the Endangered Species Act, and the Outer Continental Shelf Lands Act which "demand comprehensive, and prompt, permitting and approval proceedings."

Finally, the complaints alleges that the actions are *ultra vires* because "no act of Congress authorizes the President or federal agencies to categorically and indefinitely halt approvals of wind-energy projects pending an extra-statutory review process."

Some East Coast Offshore Wind Farms Are Operating, but Projects in Development and Research Are Being Stopped

South Fork Wind Farm. The nation's largest commercial-scale offshore wind farm opened in April 2024. The South Fork Wind farm is located 35 miles east of Montauk Pont, New York. The project's website states that the project includes 12 turbines with a combined capacity of 132 MW, and that the project will supply power to 70,000 Long Island homes each year.

Block Island Wind Farm. A smaller wind farm began operating in 2016 near Block Island in waters controlled by the state of Rhode Island. The Block Island Wind Farm

generates 30 MW of power and is reported to have generated more than 100,000 megawatt-hours of electricity powering 17,000 homes.[1]

Empire Wind Project in New York Halted. The Empire Wind project had been approved by the Biden Administration in 2023. Pursuant to a federal offshore lease issued in 2017, the first phase of the project (Empire Wind 1) is designed to deliver 810 MW of energy into Brooklyn, powering 500,000 homes. Empire Wind 2 is in the early stage of development and details for its portion of the project are not available.

Located 15-30 miles southeast of Long Island, the project will span 80,000 acres in waters between 75 and 135 feet deep and would be the first offshore wind project to deliver power directly to New York City.[2]

As part of the Trump Administration's aggressive posture against wind energy, on April 16, 2025, Interior Secretary Doug Burgum directed the Bureau of Ocean Energy Management (BOEM) to order Equinor – the Norwegian energy company developing Empire Wind – to cease all construction activities.

The BOEM letter to Empire Offshore Wind LLC states in part:

> The Bureau of Ocean Energy Management (BOEM) is issuing this Director's Order to Empire Offshore Wind LLC to halt all ongoing activities related to the Empire Wind Project on the outer continental shelf to allow time for it to address feedback it has received, including from the National Oceanic and Atmospheric Administration (NOAA), about the environmental analyses for that project. BOEM received this and other feedback regarding Empire Wind as an outgrowth of the review that the Department is engaged in related to offshore wind projects.[3]

And further:

> You may not resume activities until BOEM informs you that BOEM has completed its necessary review. If you fail to comply with the terms of this order, BOEM may take additional corrective action as appropriate.[4]

The project had been fully permitted after a seven-year permitting process. At the time of Secretary Burgum's directive, Empire Wind was about 30% complete.

Atlantic Shores' Permit Withdrawn. The Trump Administration has also revoked a U.S. Environmental Protection Agency (EPA) permit for a proposed offshore wind project in New Jersey. Atlantic Shores, a joint venture between Shell and EDF Renewables, received an Outer Continental Shelf Clean Air Act permit from the EPA in September 2024 for its planned offshore wind farm off the coast of New Jersey. The company also received its final construction permit from the BOEM.

The Clean Air permit was appealed to the EPA's Environmental Appeals Board (EAB) by Save Long Beach Island (SLBI), a group of local residents who oppose the offshore wind project. SLBI first presented its objections to the EAB in October 2024.

As a direct result of the president's executive order and the presidential memorandum, in February 2025, EPA Region 2 filed a motion for voluntary remand asking the EAB to send the Atlantic Shores permit back to the agency for review. The EAB issued an order granting the EPA's motion for voluntary remand and sent the permit back to the EPA stating in part: "The circumstances here support a voluntary remand. In this case, the [EPA] Region has clearly stated its intent to reconsider the Project and permit decision in light of the Presidential Memorandum."

Funding for Floating Offshore Wind Research Suspended. The administration also suspended federal funding that had been provided by the U.S. Department of Energy (DOE) to the University of Maine for floating offshore wind research. In July 2024, the university's website announced that it had

> been selected to receive $12.5 million through the U.S. Department of Energy's Advanced Research Projects Agency-Energy (ARPA-E) to advance the research and development of its VolturnUS + floating offshore wind turbine (FOWT) technology. This funding, which was competed under the ARPA-E ATLANTIS program, will enable UMaine to continue innovating in the field of floating offshore wind turbines with goals of further reducing costs through innovation and accelerating industrialization.

The project was to build and test a prototype in the Gulf of Maine. In suspending the funding, the DOE accused the university of "failure to comply with one or more of the National Policy Assurances" in its ongoing grants, and DOE said that it is "suspending all activity" effective April 11 for a period of up to 90 days; a decision the university is likely to appeal.

The university's quarter-size research prototype included the successful floating of a 375-ton concrete base on March 30 as the first step in the prototype project. The base was towed to Searsport, Maine, where it was docked. The work called for the eventual installation of the tower, turbines, and blades. The prototype is a 56-foot square base that stands 32 feet high. It was scheduled to undergo 18 months of testing and data collection from more than 200 sensors.

This blog was drafted by John L. Watson, an attorney in the Spencer Fane Denver, Colorado, office. For more information, visit www.spencerfane.com.

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[1] *See* the Block Island Utility District website

[2] *See* the Empire Wind Website

[3] *See* the President's Memorandum of January 20, 2025. 90 Fed. Reg. 8363 (January 29, 2025).

[4] 30 C.F.R. § 585.106(a).

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