

Trump Executive Orders Confound Energy Transition Practitioners

President Trump commenced his rollback of certain low-carbon energy policies in a flurry of executive orders. For practitioners representing clients in the energy transition, the implications depend on the type of energy, technology, or specific policy in question, and how they are perceived to fit with the administration's new "energy dominance" paradigm.

Policies promoting electric vehicles are in the bullseye, with explicit directives to end regulations and incentives favoring EV adoption. Offshore wind was targeted with a memorandum pausing leasing and permitting on public lands pending a new review. The executive orders also hit the pause button on grants and loan incentives under the Infrastructure Investment and Jobs Act and Inflation Reduction Act, but the Office of Management and Budget later issued a memo indicating that this funding pause would only apply to programs and technologies, such as EV infrastructure, deemed to be inconsistent with the administration's core policies. (As this column goes to press, an even more sweeping pause on federal spending was temporarily enjoined in court.)

These changes were part of an expected policy shift boosting development of oil, gas, and minerals, accompanied by withdrawal of a long slate of previous policies relating to environmental justice and the social cost of carbon. Agencies were also directed to reconsider, revise, and/or rescind regulations that pose an "undue burden" on "domestic energy resources."

But the executive orders may present opportunities, too. The domestic energy resources to be relieved of regulatory burdens expressly include, not only fossil fuels, but important categories of low- and zero-carbon technologies critical to the energy transition: "hydro-

power, biofuels, critical mineral, and nuclear energy resources." Moreover, the executive orders include major initiatives to promote domestic production of critical minerals that are in high demand for energy storage and renewable energy solutions.

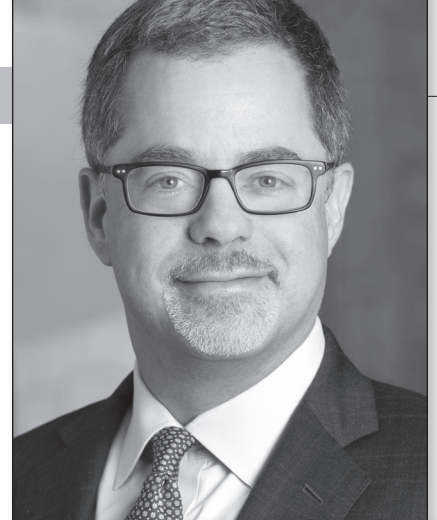
Another key opportunity for the energy transition is a commitment to permitting reform, raising hope among practitioners that the nation's labyrinthine regime of environmental review can be streamlined to allow for the buildout of all kinds of energy infrastructure, including expansion and modernization of the grid. Permitting reform, however, is an enormously complex task, and the executive orders provide few details, other than a directive to rescind CEQ's centralized

NEPA regulations, which could frustrate reform efforts by forcing policy changes to be implemented one agency at a time.

Questions abound.

A "national energy emergency" has been declared, directing federal agencies to use emergency authorities to expedite energy projects, including by using authorities under the Defense Production Act. But how will this play out in practice? The government is required within 30 days to identify planned or potential actions to increase energy supply. Of particular note to energy transition practitioners, projects eligible for expedited approval include those relating to "uranium, coal, biofuels, geothermal heat, the kinetic movement of flowing water, and critical minerals." Wind, solar, and storage are conspicuously absent.

Companies and investors in the energy transition are also keenly interested in the spending pause under the IRA and IIJA. Hundreds of millions of dollars supporting clean energy projects are potentially at stake. In general, when Congress appropriates money to



Ethan Shenkman is a partner in the environmental practice at **Arnold & Porter**. Ethan.shenkman@arnoldporter.com.

Trump's moves sewed confusion, but they also present opportunities

the executive branch, the president is required by law to obligate the funds. And the executive branch must comply with any conditions attached to such appropriated funds under the Anti-deficiency Act. The administration may be teeing up a legal dispute over the Impoundment Control Act, which says presidents can only impound funds they don't want to disburse by submitting requests to Congress.

Other questions include which greenhouse gas and energy efficiency regulations will be rescinded, which will be retained, and to what extent will the administration and Congress seek to utilize the streamlined procedures in the Congressional Review Act to effect these changes? The implications of using the CRA to claw back Biden-era regulations are significant—the CRA prohibits an agency from issuing a substantially similar regulation without permission from Congress. Regulations finalized August 2024 or later are potentially in the cross-hairs.

The executive orders also direct EPA to review "the legality and continuing applicability" of the agency's endangerment finding with respect to the impacts of greenhouse gases and climate change, the lynchpin of the greenhouse gas regulations that EPA has issued since *Massachusetts v. EPA* teed up the issue in 2007.

The first Trump administration never went this far. Whether the current one will decide it is worth taking on this fight is one of dozens of questions to be litigated in the months ahead.