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Federal Court Recognizes New York's Interest in Challenging Legality of White House's Anti-Wind Order

By Karen Meara and Christopher Rizzo
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On July 3, 2025, U.S. District Court Judge William G. Young of the District of Massachusetts rejected a motion to dismiss a lawsuit brought by New York and other states (plaintiffs) challenging the legality of an indefinite federal pause on all approvals for onshore and offshore wind development. *Massachusetts v. Trump,* WL 1836592 (D.Mass., July 3, 2025) (decision).

The indefinite pause (Wind Order) was a directive included in a presidential memorandum issued by President Donald Trump on his first day in office.

The plaintiffs challenged the wind order on a variety of grounds, including that it violated the administrative Procedures Act (APA) by requiring federal officials to ignore statutory and regulatory mandates regarding the timing of decisions on permit and other applications needed to advance wind energy projects.

Although Young initially appeared skeptical of plaintiffs' standing to file the lawsuit, he ultimately allowed the plaintiffs' APA claims to proceed.

This was no surprise; federal courts have allowed a wide variety of state-led challenges to executive orders regarding energy, regardless of which party holds the White House.

The surprise was that the court raised standing to begin with. This article discusses the *Massachusetts v. Trump* decision and New York's essential interest in advancing renewable energy.

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The Wind Order

On Jan. 20, 2025, Trump issued a presidential memorandum titled "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."

Section 2(a) of the memo—the Wind Order—directs all federal agencies to indefinitely refrain from issuing any wind-related approvals.

It prohibits "new or renewed approvals, rights of way, permits, leases, or loans" for offshore and onshore wind energy projects until the Department of the Interior, the Department of Energy and other agencies complete a "comprehensive review" of "Federal

wind leasing and permitting practices."

The Wind Order effectively halts wind projects lacking all necessary federal approvals. Very few projects escape its impact.

The order specifies no deadline for completing such review, and, when pressed by the court on that point, the administration "declined to give one."

In the meantime, federal officials with discretionary roles in wind energy project approvals have in fact paused all approvals in accordance with the Wind Orders' directive, as evidenced by agency website posts announcing pauses in permitting, and by data showing an abrupt decline in permit approval rates. (citing the states' First Amended Complaint (FAC) at ¶¶ 142-156).

New York's Interests in Wind Development

The Wind Order is directly at odds with New York's multi-pronged and legally binding efforts to reduce greenhouse gas and other harmful emissions and promote renewable energy.

The leading example of these efforts is implementation of the state's Climate Leadership and Community Protection Act, which requires state electric utilities to secure 70% of their electric supply from renewable sources by 2030 and 100% from zero emissions sources by 2040, and requires the development of 9,000 megawatts of offshore wind capacity by 2035.

New York has made substantial investments in encouraging the development of utility scale onshore and offshore wind, and related supply chains. A freeze on federal approvals directly undermines that effort, as well as the thousands of jobs and hundreds of millions of dollars in private sector investments it has spurred.

For example, as alleged in the FAC, New York has more than 20 land-based wind projects in various stages of development that are "expected to provide hundreds of millions of dollars in incremental economic benefits to New York state," including taxes that would be paid directly to municipalities. See FAC at ¶ 181.

New York is also a long-standing member of the Regional Greenhouse Gas Initiative (RGGI), a group of ten states that have entered into a voluntary cap and trade agreement that limits emissions from power plants. RGGI just announced a significant reduction in the cap going forward, which creates further pressure to develop wind and other renewable energy.

The Litigation

On May 5, 2025, New York, Massachusetts, Arizona, California, Colorado, Connecticut, Delaware, the District of Columbia, Illinois, Maine, Maryland, Michigan, Minnesota, New Jersey, New Mexico, Oregon, Rhode Island and Washington sued Trump, the United States, the Department of Interior, Secretary Douglas Burgum and other federal agencies and officials responsible for implementation of the Wind Order, seeking declaratory and injunctive relief.

ACE NY, a not-for-profit organization that advocates for the development of renewable energy and whose members include companies involved in wind and solar development and operation, successfully moved to intervene.

Plaintiffs initially sought injunctive relief, but at a June 5 hearing the court unexpectedly converted the administration's opposition to the motion for a preliminary injunction to a motion to dismiss.

The court also pressed the states to provide additional information on the harms presented by the Wind Order—an issue that goes to the states' standing—and the statutes violated by its implementation. Plaintiffs subsequently amended their complaints and all parties filed supplemental briefing to address these issues.

At the core of plaintiffs' complaints are claims that agency officials are violating the APA by implementing the Wind Order. Specifically, plaintiffs allege that implementation of the Wind Order is arbitrary and capricious (5 U.S.C. §706(2)(A)) to the extent the administration offered no reasoned basis for pausing all wind approvals, and that such pause directly contradicts a separate executive order which declared a "national energy emergency."

They also allege that its implementation is contrary to law and in excess of authority (§706(2)(A), (C)) since implementing an indefinite pause on approvals clearly violates statutory and regulatory requirements, such as the APA's requirement that agencies complete congressionally mandated reviews and issue decisions within a "reasonable time." FAC at ¶ 415 (quoting 5 USC §558(c)).

ACE NY also alleges that the order violates the APA's notice and comment requirement because an indefinite pause is a substantive rule under the circumstances. Plaintiffs also brought equitable, common law and citizen suit claims, and ACE NY also

brought a constitutional claim (alleging that the Wind Order violated the separation of powers), all of which were dismissed for reasons that are beyond the scope of this article.

The Decision

The court denied the defendant's motion to dismiss as to all the APA claims. Defendants' had argued that (i) the states lacked the injury-in-fact, and redressability needed for standing and (ii) the indefinite pause was not a final agency action subject to the APA, among other unsuccessful lines of attack.

The court's ultimate rejection of these arguments should come as no surprise for the reasons that follow.

Injury: Federal courts have long recognized that states concerned about the adverse impacts of federal action on specific state interests have standing to sue, including in multiple cases in which states had challenged President Joe Biden's energy orders. *See, e.g., Louisiana v. Biden*, 622 F. Supp. 3d 267 (W.D. La. 2022) (holding that Louisiana and twelve other states had standing to challenge a Biden Executive Order that indefinitely paused oil and gas leasing because they faced imminent injury in the form of lost lease revenues, job losses and economic damage, that were fairly traceable to the order and could be cured by an injunction).

Here, spurred on by the court, the administration argued that the states lacked any direct or non-speculative injury.

However, the court found that the states had alleged direct harms comparable to the harms recognized in *Louisiana v. Biden*, like lost revenues, jobs and economic damage, as well as unique harms like "energy reliability and affordability problems due to reliance on the regulatory regimes the Wind [Order] has interrupted, and difficulty meeting state statutory emission-reduction goals meant to benefit the states' residents."

The court also noted that, in the alternative, the states had standing pursuant to the "special solicitude" afforded to states that "seek to assert a congressionally bestowed procedural right" via the APA where the challenged action impacts the "states' quasi-sovereign interests" such as local revenues.

Redressability: The administration also argued that redressability was too speculative in that the States could not be sure any specific project would receive all required approvals.

The court dismissed that argument as misstating the law; "'those adversely affected by a discretionary agency decision generally have standing to complain that the agency based its decision upon an improper legal ground,'" regardless of whether or not the agency might ultimately "reach the same result through different reasoning." (*quoting Federal Election Comm'n v. Akins*, 524 U.S. 11, 25 (1998)).

Finality: Defendants argued that Plaintiffs' APA claims should be dismissed because there was no final agency action subject to APA review. The court held otherwise. In order to be deemed "final" an action must be "the consummation of the agency's decision-making process" and "one …from which legal consequences flow." (*citing Bennett v. Spear*, 520 U.S. 154, 178 (1997)).

Relying once again on *Louisiana v Biden*, and several other cases involving indefinite pauses or moratoria, see, e.g., *Natural Resources Defense Council v. Wheeler*, 955 F.3d 68 (D.C. Cir. 2020); *Clean Air Council v. Pruitt*, 862 F.3d 1, 6 (D.C. Cir. 2016), the court found that agency officials' implementation of the indefinite pause on approvals for wind projects, now over five months old with no end in sight, was a de facto final action with concrete legal consequences.

In so holding the court stated that agency action "cannot be exempted from judicial review merely by being characterized as 'intermediate.'"

As to legal consequences, the court observed that the Wind Order "in effect amends several regulations by requiring that the agencies must not follow the usual, specified procedures for an unspecified period of time, enacting a kind of de facto suspension of the law with respect to wind energy development," a move that has real world consequences.

With the court having rejected the administration's threshold arguments in line with decisions of sister courts, the case moved to summary judgment, with briefs due in August and arguments scheduled for early September.

In the meantime, each day the indefinite pause remains in place, the injury to New York and the other plaintiffs will be real.

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