

Title: White House Efforts to Kill the Offshore Wind Industry Fare Poorly in Court

The White House has made no secret of the president's animosity toward wind energy, particularly offshore wind, and has taken concrete steps to thwart the industry. On Jan. 20, 2025, the president issued a Presidential Memorandum that, among other things, purported to halt the federal review and permitting of wind projects in the planning, design, and application stages (the Wind Order). A district court has already ruled that the Wind Order is illegal, though federal defendants will likely appeal. See *New York v. Trump*, 25-cv-11221 (D. Mass., Dec. 8, 2025).

The administration then quickly shifted tactics. On Dec. 22, 2025, the Acting Director of the U.S. Bureau of Ocean Energy Management issued an order suspending leases for five fully permitted and under-construction offshore wind projects on land leased by the federal government more than a decade ago, including two that would supply power to New York (the Suspension Order). All five developers have sued, and thus far every court to weigh in (four) has ruled that (i) the Suspension Order is likely illegal and (ii) plaintiffs would suffer irreparable harm without an injunction. This article summarizes the current litigation status, New York's unique interests in offshore wind, and global repercussions.

The Wind Order Was Intended to Halt Future Offshore Wind Projects

On Jan. 20, 2025, Donald 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" (90 Fed. Reg. 8363). It withdrew submerged lands from future leasing for wind under the Outer Continental Shelf Lands Act (OCSLA) (leaving them available for oil and gas production) and directed relevant agency heads to halt review and permitting of onshore and offshore wind projects that had not yet received federal approvals. Ironically, some of the impacted projects secured their lease rights during the first Trump administration.

The U.S. District Court for the District of Massachusetts Has Vacated the Wind Order and Declared It Unlawful

In *New York v. Trump*, the federal district court for the District of Massachusetts ruled that the Wind Order violates the Administrative Procedure Act. The plaintiffs include New York and 16 other states ranging from Massachusetts to Arizona, along with an intervenor, the Alliance for Clean Energy New York. The defendants include President Donald Trump and numerous agency heads and agencies. The broad plaintiff group underscores the importance of both upland and offshore wind to the energy plans and economies of many states.

Plaintiffs argued that both the Wind Order and the agencies' decisions to follow the president's directives were arbitrary and capricious and contrary to law. The court agreed, rejecting the defendants' position that agencies were acting legally and rationally simply because they were following a presidential directive. The court reasoned that unless a statute grants the executive branch authority to dictate the terms of a permitting scheme—which OCSLA and other relevant environmental laws do not—federal agencies cannot rely on an executive memorandum or order to justify their actions. The court distinguished the Supreme Court's recent decision in *Trump v.*

Orr, ___ U.S. ___ (2025), noting that the statute at issue there committed the exercise of discretion directly to the president.

The court further stated that the administrative record demonstrated that the agencies had not reasonably considered the relevant issues or reasonably explained their decision to implement the Wind Order. The agencies conceded that the sole basis for their actions was the presidential order. The court also held that the “halt” on permitting and review violated the APA’s requirements that agencies conclude matters presented to them and make decisions within a reasonable time.

Despite the plaintiffs’ victory, it remains unclear whether federal agencies will in fact restart review and permitting for the 15 to 20 offshore projects in the permitting pipeline, let alone the hundreds of upland projects affected.

The Suspension Order Was Intended to Halt Five Major Projects Under Construction

On Dec. 22, 2025, the Acting Director of the Department of the Interior’s Bureau of Ocean Energy Management issued sweeping suspension orders affecting five offshore wind projects: Vineyard Wind (Massachusetts), Revolution Wind (Rhode Island), Empire Wind and Sunrise Wind (New York), and Coastal Virginia Offshore Wind (Virginia). Each project had secured all necessary permits and approvals after multiyear application and environmental review processes. Construction was well underway, and some projects were partially operational. Developers had already invested billions in development and construction.

The Suspension Order cited classified national security concerns, referencing an additional assessment by the Department of War in November 2025 and stating that new classified information, including the rapid evolution of adversary technologies, created direct national security impacts from offshore wind projects. The order asserted that these impacts were heightened by the projects’ sensitive East Coast locations and posed serious, immediate, and irreparable harm. BOEM stated that suspension of on-lease activities was necessary while it coordinated with the Department of War to determine whether mitigation was possible or whether projects would have to be cancelled.

It remains unclear what security issue has arisen. OCSLA regulation 30 CFR 585.417 permits suspensions only to meet judicial requirements or for reasons of national security or defense.

Four District Courts Have Enjoined the Suspension Order, and the Fifth Is Likely to Do So

Each developer has sued the Department of the Interior and Secretary Burgum to have the suspensions vacated and declared unlawful on procedural and substantive grounds, including exceeding statutory authority, acting arbitrarily and capriciously, and violating due process and notice requirements. Each has sought a preliminary injunction, and to date, four injunctions have been granted. A fifth, Sunrise Wind’s, remains pending, with oral argument scheduled for Feb. 2, 2026.

In *Empire Leaseholder LLC v. Burgum*, No. 1:26-cv-00004-CJN (D. D.C., Jan. 15, 2026), the court found that Empire met the standard for a preliminary injunction regarding suspension of its lease and permits issued in 2024 after a decade of review. Ruling from the bench, Judge Carl J. Nichols determined that Empire was likely to succeed on at least one claim, particularly that the Suspension Order was arbitrary and capricious and violated due process. The court gave little weight to the alleged national security justifications, which had been confidentially briefed, in assessing the need for immediate cessation of construction.

Empire Wind is critically important for both the project sponsors and New York State. The project was 60% complete when the Suspension Order was issued, and sponsors had already invested approximately \$4 billion. Its 2,000 megawatts of power are essential to supplying downstate New York and would generate the equivalent output of three or four gas-fired power plants.

Three other challenges to the Suspension Order have resulted in similar injunctions, and the remaining case is likely to do so as well. The cases will proceed to final decisions on the merits, and federal defendants may pursue interlocutory appeals to vacate the injunctions.

New York Is Uniquely Harmed by the Orders

New York has one of the most demanding climate laws in the nation. The Climate Leadership and Community Protection Act (CLCPA) mandates a 40% reduction in greenhouse gas emissions from 1990 levels by 2030 and an 85% reduction by 2050 (NYS Environmental Conservation Law § 75-107). It also requires utilities to supply 70% of electricity from renewable sources by 2030 and 100% from zero-emissions sources by 2040 (NYS Public Service Law § 66). Additionally, the CLCPA mandates development of nine gigawatts of offshore wind energy by 2035.

New York cannot meet these mandates without offshore wind. Offshore wind is also central to grid resiliency and accommodating anticipated increases in electricity demand from large-scale projects such as microchip fabrication facilities, data centers, and building electrification initiatives. The federal orders therefore uniquely harm the state.

Is the White House Distinguishing Between Upland and Offshore Wind?

Wind energy supplies approximately 10% of U.S. electricity and continues to grow, primarily through upland wind farms. It is unclear whether the administration intends to permit upland wind growth while halting offshore wind, though the president has criticized all forms of renewable energy. The Wind Order halts review and permitting for both.

However, offshore wind is uniquely vulnerable because the federal government owns the ocean floor beyond three miles offshore. Every offshore wind project relies directly on federal leasehold rights. Upland wind projects are generally not located on federal land and may not require federal permits. Nonetheless, targeting wind energy broadly is notable given its economic significance in reliably Republican states such as Texas, North Dakota, and Iowa.

Allowing These Orders to Take Effect Would Produce Significant Economic Harm

While predicting the economic future of wind energy is beyond the scope of this article, the rapid global expansion of wind power underscores the stakes. The top ten offshore wind countries—including China, the United Kingdom, and Germany—collectively operate 327 offshore wind farms, with dozens more under development. Wind power supplies a substantial percentage of electricity in these countries, ranging from approximately 10% in China to 57% in Denmark, and continues to grow annually.

Due largely to onshore wind, the United States has more wind power capacity than any country except China. If appellate courts and the Supreme Court ultimately permit the Wind Order and Suspension Order to take effect, the United States risks placing itself at a significant economic disadvantage in a rapidly expanding global industry for decades to come.