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GIBSON DUNN

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Unleashing American Energy: Examining the Executive Order's Impacts on the Energy Industry

Our update provides key takeaways from President Trump's Executive Order and its potential impact on various energy initiatives as well as the M&A and capital markets outlook for energy companies.

On January 20, 2025, President Donald Trump signed executive order "Unleashing American Energy" (the Executive Order). This update discusses key takeaways from the Executive Order and the potential impact of the Executive Order on various energy initiatives as well as the M&A and capital markets outlook for energy companies. For a broader discussion of the twenty-six executive orders President Trump signed on January 20, 2025 and the major regulatory and policy issues energy industry experts will be monitoring in the coming days, please refer to Trump 2.0 on Energy: Ten Items to Watch.

1. Overview of the Executive Order

The Executive Order is intended to reverse years of what the new administration characterizes as "burdensome and ideologically motivated regulations" which have impeded the development of America's abundant energy and natural resources. By implementing new policies and revoking several executive orders from prior administrations, the Executive Order seeks to promote and encourage energy exploration and development by revising the permitting process, revoking or revising regulations, and promoting domestic mining, amongst other changes.

2. Impact on Oil & Gas Leasing and Permitting

The Executive Order lays out policies of the United States which include (a) encouraging energy exploration and production of Federal lands and waters, including on the Outer Continental Shelf, in order to meet the needs of US citizens and solidify the United States as a global energy leader and (b) establishing the United States' position as the leading producer and processor of non-fuel minerals, thus creating jobs and prosperity at home.

The heads of all federal agencies are ordered to review, revise, or rescind all existing regulations, orders, guidance documents, policies, or other agency actions, that impose an undue burden on the identification, development or use of domestic energy resources, particularly "oil, natural gas, coal, hydropower, biofuels, critical mineral, and nuclear energy resources." Agency heads are instructed to develop and begin implementing action plans to suspend, revise or rescind any such unduly burdensome agency actions within 30 days of the Executive Order (Feb. 19, 2025).

The chair of the Council of Environmental Quality (CEQ) is ordered to provide guidance on implementing the National Environmental Policy Act (NEPA) and propose rescinding burdensome NEPA regulations in order to expedite and simplify permitting. Further, the Executive Order directs various federal agencies to eliminate delays within their permitting process. In doing so, the Executive Order intends to streamline the NEPA judicial review process and promote the permitting and construction of critical infrastructure whilst providing greater certainty in the Federal permitting process.

These changes are expected to streamline and promote domestic exploration and production on both onshore and offshore federal oil and gas leases. While challenges from environmental groups are likely, we expect significantly more federal lease sales to be conducted, including in federal lands that had never previously been considered for sale. Environmental review of well and pipeline permit applications will still occur, but the process will likely be overhauled and permit approvals will likely be granted significantly faster in an effort to promote resource development.

3. Pause on Inflation Reduction Act Funding on Various Energy Projects

Pursuant to the Executive Order, all agencies are to immediately pause the disbursement of funds appropriated through the Inflation Reduction Act (Public Law 117-169, IRA) or the Infrastructure Investment and Jobs Act (Public Law 117-58, IIJA). On January 21, 2025, the acting director of the Office of Management and Budget (OMB) issued guidance clarifying that the pause only applies to funds supporting programs, projects or activities that contravene the policies of the Executive Order and that agency heads may disburse funds as they deem necessary after consulting with OMB. Given that the Executive Order indicates a lack of support for solar and wind, while remaining silent on geothermal or carbon capture, utilization, and storage (CCUS), IRA and IIJA funding for geothermal and CCUS projects may not be suspended for long, if at all. However the future of federal funding for solar and wind-related projects is more uncertain.

It is important to note that a pause on federal funding under the IRA is not tantamount to a revocation of tax credits under the IRA. For further discussion on the impact to IRA Tax Credits, please refer to Trump 2.0 on Energy: Ten Items to Watch.

4. Changes to Environmental Analyses and Carbon Monitoring

The Executive Order aims to streamline the permitting process, reduce regulatory burdens, and shift the focus away from certain climate-related metrics. As touched on in Section 2 above, it does so in part by revoking prior Executive Orders related to Environmental regulations under NEPA and directing agencies to make changes related to consideration and calculation of greenhouse gas emissions.

- **Revocation of Executive Order 11991**: Revokes Executive Order 11991 (Carter, May 24, 1977), which amended Executive Order 11514 (Nixon, March 5, 1970). Executive Order 11991 tasked CEQ with issuing regulations to federal agencies for implementing the procedural provisions of NEPA, and directed that federal agencies comply with those regulations unless such compliance would be inconsistent with statutory requirements.
- **NEPA Implementation**: Tasks the Chairman of CEQ with providing guidance to expedite and simplify the permitting process under the NEPA. Agencies are required to prioritize efficiency and certainty in the permitting process, minimizing delays and ambiguity.
- **Adherence to Legislated Requirements:** Agencies must adhere strictly to legislated requirements for environmental considerations, using robust methodologies and avoiding arbitrary or ideologically motivated methods.
- **Disbanding the Interagency Working Group on the Social Cost of Greenhouse Gases (IWG)**: The IWG is disbanded, and all its guidance, instructions, and documents are withdrawn. This includes the withdrawal of the Technical Support Document on the social cost of carbon, methane, and nitrous oxide.
- **Elimination of the Social Cost of Carbon Calculation**: The calculation of the social cost of carbon is deemed arbitrary and potentially harmful to the U.S. economy. The EPA Administrator is directed to issue guidance to address these issues, including the potential elimination of the social cost of carbon calculation from federal permitting or regulatory decisions.
- **Review of EPA's Endangerment Findings**: The EPA Administrator, in collaboration with other agencies, is to review the legality and applicability of the EPA's findings on greenhouse gases under the Clean Air Act.
- **Review of Agency Actions**: Agency heads must review existing regulations and actions to identify those that burden domestic energy development, and create and implement plans to suspend, revise, or rescind identified burdensome actions, in collaboration with OMB and the National Economic Council (NEC).
- **Revocation of Executive Orders**: Revokes a dozen of President Biden's Executive Orders related to environmental justice, climate change, and the environment.

There are various agency deadlines related to the above NEPA and carbon monitoring changes which will need to be achieved as part of the Executive Order.

- Within 30 days:
  - Agency heads must develop and begin implementing action plans to suspend, revise, or rescind burdensome actions.
  - The Chairman of CEQ must provide guidance on implementing NEPA.
  - Agencies must submit reports identifying instances where enforcement discretion can advance policy goals.
- Within 60 days:
  - The EPA Administrator must issue guidance addressing the inadequacies of the social cost of carbon calculation.

The Executive Order mandates a review and revision of regulations that are seen to burden domestic energy development, which could lead to faster permitting processes and reduced compliance costs for energy companies. CEQ is expected to be stripped of its power to issue binding NEPA regulations for federal agencies. Because most agencies have their own regulations to implement NEPA, this change will not eliminate NEPA reviews. The elimination of the social cost of carbon calculations is intended to lessen the importance of climate change analysis in permitting decisions. Industry should prepare for streamlined regulatory requirements and potential shifts in the rigor required to prepare environmental analyses and environmental impact statements, with agencies tasked with focusing on efficiency and adherence to strict legislative text and these new guidelines. We expect NEPA litigation to increase as environmental groups challenge these executive orders. Energy sector companies should stay informed about changes to ensure compliance and leverage opportunities for expedited project approvals over the coming months as these agencies undergo a potentially major overhaul of NEPA and carbon reporting.

5. Impact on LNG Export Projects

The Executive Order directs the Secretary of Energy to "restart reviews of applications for approvals of liquified natural gas (LNG) export projects," which, coupled with President Trump reversing the Biden administration's pause on LNG permits on day one of his second term by rolling back President Biden's executive order that paused granting LNG export authorizations, suggests an emphasis on increasing LNG exports by the current administration. LNG exports are a key driver for investment in natural gas assets, midstream projects, and CCUS, thus such a change should be positive for investment and dealmaking in these areas.

For further discussion on the future of LNG under the Trump administration, please refer to Trump 2.0 on Energy: Ten Items to Watch.

6. Impact on Mergers & Acquisitions and Antitrust in the Energy Industry

While the Executive Order promises to reduce administrative hurdles to traditional energy projects, we expect oil and gas companies to operate largely consistently with the approach they have taken in the post-pandemic era, with an emphasis on capital discipline, efficient returns, and consolidation. The Executive Order will likely enhance the value of companies with asset bases that include large portfolios of leases on federal lands or in the Outer Continental Shelf, but from

a dealmaking perspective, the administration's attitude shift toward traditional energy is likely to also be seen in the antitrust review process. With the change in political leadership and an emphasis on encouraging investment in natural resources in the name of energy security, the Federal Trade Commission (FTC) is unlikely to be as hostile to mergers and acquisitions in the energy industry as the previous administration. For example, the FTC conducted large-scale Second Request investigations into a range of industry transactions as part of its antitrust reviews under the Hart-Scott-Rodino (HSR) Act, following requests from Democratic leadership in the Senate for thorough investigations of industry transactions. With that said, the FTC cleared most industry transactions without challenge, despite the costs imposed through extensive investigations. Furthermore, the career FTC staff that has reviewed transactions in the industry for a number of years will likely remain in place, suggesting that changes in the substantive review of industry transactions are likely to be modest. Nonetheless, the potential for fewer Second Requests and quicker HSR approvals would be beneficial to an energy consolidation wave that industry experts suggest has not yet crested.

7. Impact on Energy Industry Capital Raising and Public Company Regulation

The reduction in environmental reporting and carbon monitoring under the Executive Order, in combination with the policy objectives stated in the Executive Order and other directives from the Trump administration, indicate that the outlook for energy capital markets and public company regulation under the second Trump administration is positive. Both going public and operating as a public company should be less time-consuming and costly than it was under the Biden administration. A majority of the U.S. Securities and Exchange Commission (SEC) commissioners (including the nominated chair, former Commissioner Atkins) will be appointed by President Trump and, judging from the first Trump administration, will set an agenda that is supportive of capital raising and focused on reducing the burden of being publicly traded. For example, the climate disclosure rules adopted by the Biden administration's divided SEC (and stayed pending challenge in federal court) are likely to be repealed, saving energy companies a significant amount of G&A expense and reducing the risk of litigation. As another example, based on experience with the SEC review process under the first Trump administration, we expect the process and waiver requests to be faster and more commercial, further facilitating capital markets transactions. We also can expect rule proposals that are focused on making it easier for private companies to raise capital from a broader investor base. For capital intensive businesses in the energy industry, a relatively fast, predictable process with as little unnecessary expense as possible, is important. As such, we expect the backlog of private energy companies who have been waiting to IPO to seize the opportunity to access the capital markets while the process is easier, being a public company is less costly, and the broader business climate for the industry is supportive. In addition, we expect public energy companies to take advantage of this improved regulatory climate to access the capital markets more often than in recent years. Regardless, investor pressures to live within free cash flow, maintain low leverage and pay dividends to shareholders will continue to impact decision making with respect to equity and debt capital markets transactions.

Despite all this optimism, it remains true that capital markets for the energy industry are only as strong as the capital markets themselves. Other significant events, such as war, pandemic, inflation, labor shortages, or supply cost increases from tariffs, could have an adverse impact on the equity markets or the energy industry generally. Similarly, any increases in the deficit and

inflation could cause interest rates to rise again, increasing the cost of accessing the debt capital markets. Even so, energy capital markets generally thrive on stability and low volatility and the regulatory environment under the second Trump administration appears to be conducive to this.

The following Gibson Dunn lawyers prepared this update: Rahul Vashi, Hillary Holmes, Harrison Tucker, Adam Whitehouse, and Zain Hassan.

Gibson, Dunn & Crutcher's lawyers are available to assist in addressing any questions you may have about these developments. To learn more, please contact the Gibson Dunn lawyer with whom you usually work, the authors, or any leader or member of the firm's Oil & Gas, Energy Regulation & Litigation, Environmental Litigation & Mass Tort, Power & Renewables, Cleantech, Antitrust & Competition, Capital Markets, or Mergers & Acquisitions practice groups:

Oil and Gas:
Michael P. Darden – Houston (+1 346.718.6789, mpdarden@gibsondunn.com)
Rahul D. Vashi – Houston (+1 346.718.6659, rvashi@gibsondunn.com)
Graham Valenta – Houston (+1 346.718.6646, gvalenta@gibsondunn.com)

Energy Regulation and Litigation:
William R. Hollaway – Washington, D.C. (+1 202.955.8592, whollaway@gibsondunn.com)
Tory Lauterbach – Washington, D.C. (+1 202.955.8519, tlauterbach@gibsondunn.com)

Environmental Litigation and Mass Tort:
Stacie B. Fletcher – Washington, D.C. (+1 202.887.3627, sfletcher@gibsondunn.com)
David Fotouhi – Washington, D.C. (+1 202.955.8502, dfotouhi@gibsondunn.com)
Rachel Levick – Washington, D.C. (+1 202.887.3574, rlevick@gibsondunn.com)

Power and Renewables:
Peter J. Hanlon – New York (+1 212.351.2425, phanlon@gibsondunn.com)
Nicholas H. Politan, Jr. – New York (+1 212.351.2616, npolitan@gibsondunn.com)

Cleantech:
John T. Gaffney – New York (+1 212.351.2626, jgaffney@gibsondunn.com)
Daniel S. Alterbaum – New York (+1 212.351.4084, dalterbaum@gibsondunn.com)
Adam Whitehouse – Houston (+1 346.718.6696, awhitehouse@gibsondunn.com)

Antitrust and Competition:
Rachel S. Brass – San Francisco (+1 415.393.8293, rbrass@gibsondunn.com)
Kristen C. Limarzi – Washington, D.C. (+1 202.887.3518, klimarzi@gibsondunn.com)
Cynthia Richman – Washington, D.C. (+1 202.955.8234, crichman@gibsondunn.com)

Capital Markets:

Andrew L. Fabens – New York (+1 212.351.4034, afabens@gibsondunn.com)
Hillary H. Holmes – Houston (+1 346.718.6602, hholmes@gibsondunn.com)
Stewart L. McDowell – San Francisco (+1 415.393.8322, smcdowell@gibsondunn.com)
Peter W. Wardle – Los Angeles (+1 213.229.7242, pwardle@gibsondunn.com)

Mergers and Acquisitions:
Robert B. Little – Dallas (+1 214.698.3260, rlittle@gibsondunn.com)
Saee Muzumdar – New York (+1 212.351.3966, smuzumdar@gibsondunn.com)
George Sampas – New York (+1 212.351.6300, gsampas@gibsondunn.com)

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