ERM POLICY ALERT

May, 2025

Federal Energy Policy Shifts: Insights from Recent Executive Orders

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On April 8th and 9th, U.S. President Donald Trump signed a series of Executive Orders (EO), some of which are directly relevant to the U.S. power grid and various decarbonization efforts. The Executive Orders were:

1. Strengthening the Reliability and Security of the United States Electric Grid ("Grid Reliability")
2. Protecting American Energy From State Overreach ("State Regulations")
3. Reinvigorating America's Beautiful Clean Coal Industry and Amending Executive Order 14241 ("Coal Industry")
4. Zero-based Regulatory Budgeting to Unleash American Energy ("Zero-based Regulation")

The "Grid Reliability" EO is aimed at ensuring the grid's reliability, resilience, and security by utilizing all available power generation resources. The EO directs the U.S. Department of Energy (DOE) to:

- streamline procedures for using its emergency power under the Federal Power Act (FPA) to order some generation facilities to run
- develop a methodology to analyze reserve margins
- prevent generation from retiring – or fuel switching – if doing either would cause a reduction in net capacity

ERM INSIGHT:

If the order results in power resources deferring their retirement and staying on-line longer, near-term reliability could be improved, though it may dampen generators' appetite to add new resources to the grid. If the DOE dramatically changes the way reserve margin is calculated, ERM expects challenges to the EO, as it could change the economic position of some generation companies. Similarly, preventing some generators from retiring would also affect the economic position of other generators, and ERM expects challenges to the Administration's reading of the FPA's emergency powers. If generators believe these EOs or the use of emergency powers unfairly restrict their ability to manage assests, they will probably challenge the administration in court. Past examples of the exercise of FPA emergency power were around events such as the wide-scale blackout in 2003 and the polar vortex of 2014. If the EOs' implementation leads to increased operational costs for energy providers, many of those costs would be passed on to ratepayers.

The "State Regulations" EO aims to increase centralization of energy regulation at the federal level, addressing various state and local policies that the Administration sees as burdensome or ideologically motivated. The EO would:

- dismantle barriers to interstate and international trade of energy
- prevent states from imposing retroactive fines or "excessive" penalties on energy producers
- streamline the permit process of new resources coming online
- mitigate the impacts of what the U.S. administration considers "burdensome" or "extortionary" climate change policies

The EO directs the U.S. Attorney General (AG) to identify and challenge state regulations that would impede siting of various resources, including oil, gas, coal, natural gas, geothermal, hydropower, biofuel, nuclear and critical mineral resources. The EO also directs the AG to stop enforcement of state laws on climate change and ESG (Environmental, Social and Governance), and to stop climate-related lawsuits. Some significant laws and programs expected to be targeted are the multistate Regional Greenhouse Gas Initiative (RGGI), 29 states' Renewable Portfolio Standards, and California climate disclosures (CA 253, 261 and 219). The EO constrains the AG to bring cases against state laws that are unconstitutional or are preempted by federal law.

ERM INSIGHT:

No player in the energy sector is fond of burdensome regulations that inhibit development. By the same token, few firms are comfortable with uncertainty nor rapid changes to business models. The EO creates uncertainty because it challenges the status quo of the balance of state and federal regulatory authority. The EO's premise is that environmental laws and climate regulation are at odds with economic growth, but this assertion is subject of much debate. Moreover, removal of environmental safeguards is likely to result in environmental damage, which itself causes negative economic externalities.

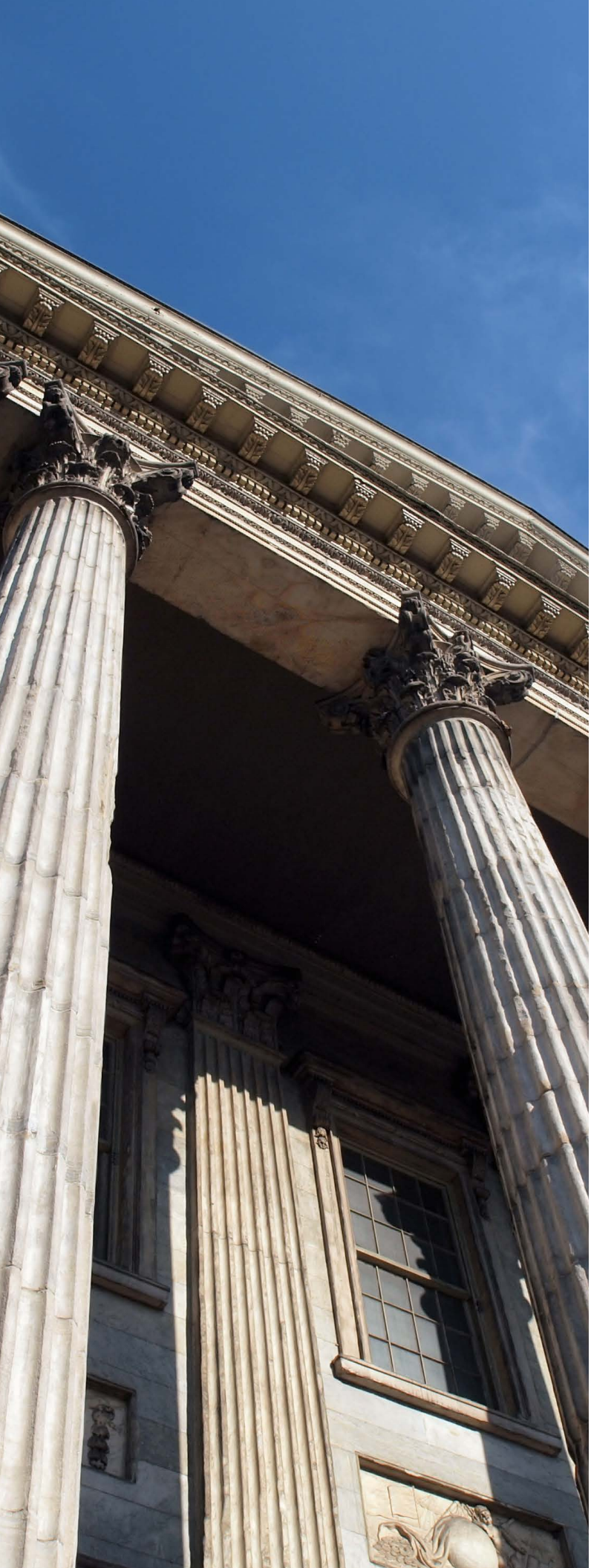
ERM expects this EO may be challenged by state Attorneys General - or, if not the EO itself, its implementation - as they may consider it an unconstitutional overstep of federal authority. The FPA gives states authority to regulate power within their own borders. Beyond the power sector, courts have long established the principle of federalism to constrain the power of the federal government only to powers made explicit by the Constitution. Individual states have broader legislative authority. In cases where there is specific federal law contradicting a state law, the principle of federal preemption rules, so the federal government is limited in its ability to simply override state laws. The Tenth Amendment reserves powers not delegated to the federal government to the states, which could be a basis for challenging the order. The order's provision to prevent states from imposing retroactive fines on energy producers could be challenged as states may argue the federal government is overstepping its authority. States which have enacted laws to fine on energy producers for greenhouse gas emissions may argue that the order undermines their efforts to combat climate change. Legal battles could arise over the validity and enforcement of these state policies. States with stringent environmental and public health regulations may challenge the order on the grounds it unlawfully preempts state laws designed to protect the environment and public health.

The EO contends that some existing state laws violate federalism and overstep state authority; this EO is a challenge to states. Constitutionality and preemption are themselves contestable case by case, so this EO's implementation seems destined for the courts in one way or another.

The "Coal Industry" EO aims to boost the U.S. coal industry by removing regulatory barriers, promoting coal production, and increasing coal exports. The EO designates coal as a critical mineral, prioritizes coal leasing on federal lands, and directs various departments to revise policies that discourage coal investment. The order emphasizes coal's role in national security, economic prosperity, and meeting increased electricity demand from emerging technologies, including AI data centers. The order also seeks to accelerate the development of coal technologies and expand the use of categorical exclusions under the National Environmental Policy Act to facilitate coal production and export. Further, it directs the Departments of Energy and Commerce to identify areas where coal resources and coal power could be developed to serve data centers for AI and cryptocurrency. The EO requires a report from the Secretaries and Administrators of multiple federal agencies, including Energy, Interior, Labor, Treasury, Commerce, Agriculture, EPA, the Export-Import Bank and the International Development Finance Corporation with recommendations.

ERM INSIGHT:

This EO mandates action by federal agencies only, which is a more traditional use of, and role for, EOs. The EO itself will not directly affect how much coal is developed or how much coal power built, though the final report may contain recommendations to incentivize additional coal power. If federal agencies ultimately rescind policies that aim to transition the U.S. away from coal, the order may lead to a relaxation of environmental and climate regulations and could undermine efforts to promote renewable energy and reduce carbon emissions.



The "Zero-based Regulation" EO directs FERC; the EPA; the DOE; the Nuclear Regulatory Commission; the Department of the Interior's Office of Surface Mining Reclamation and Enforcement, Bureau of Land Management, Bureau of Ocean Energy Management, Bureau of Safety and Environmental Enforcement and the Fish and Wildlife Service; and the U.S. Army Corps of Engineers to sunset regulations "governing energy production to the extent permitted by law." The EO excludes regulatory regimes and timelines authorized by statute, i.e., made explicit in the law rather than in regulation. Many statutes do, in fact, have explicit regimes.

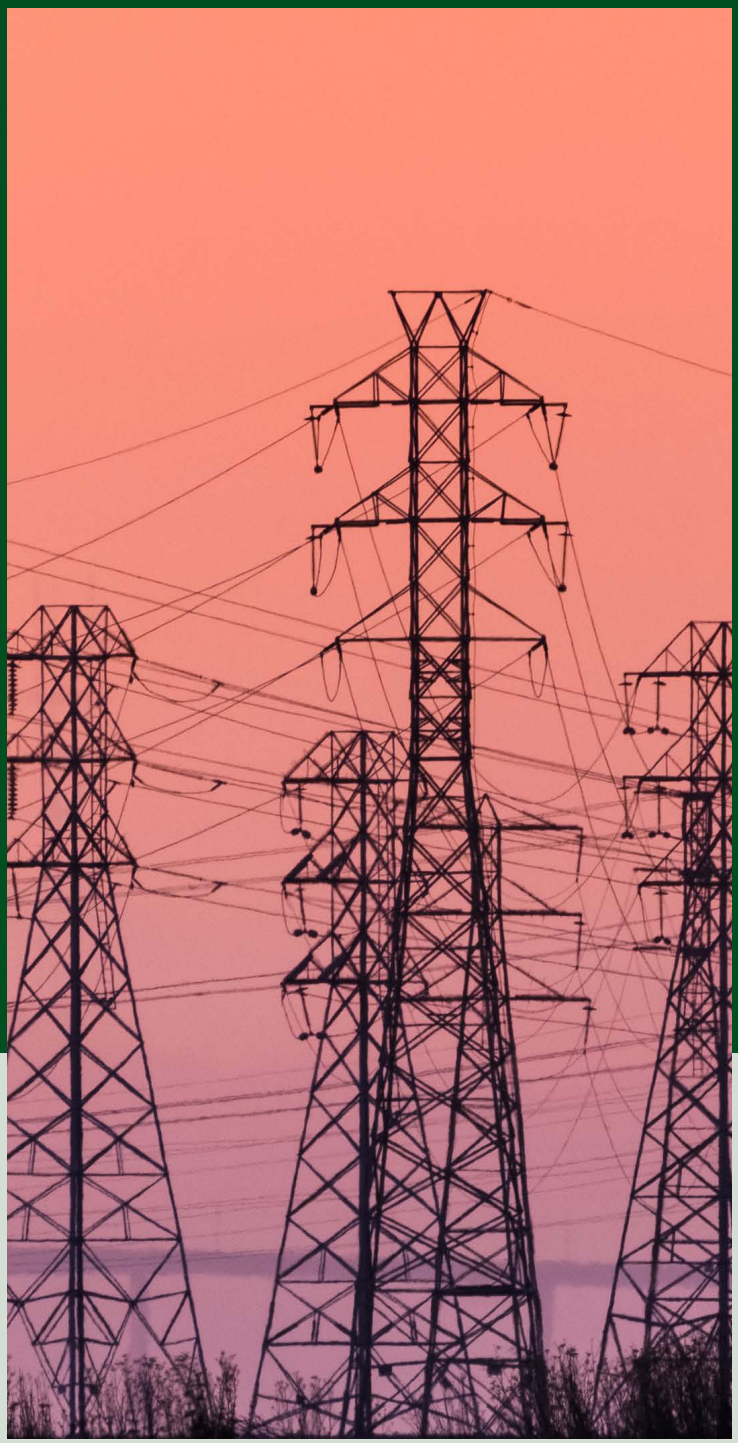
ERM INSIGHT:

The key clause is that the sunset is proscribed by "the extent permitted by law." The agencies could be cautious in their interpretation, or they may choose to test the limits of the administrative state and federal power. If the agencies find it within their authority to sunset regulations, then the scope of the EO could be remarkably large, as it would affect the Atomic Energy Act, the National Appliance Energy Conservation Act, the Energy Policy Act of 1992, the Energy Policy Act of 2005; the Energy Independence and Security Act; the Federal Power Act; the Natural Gas Act; and the Power Plant and Industrial Fuel Use Act, and many more. Regardless of how cautiously or aggressively the administration acts, ERM believes the EO and its implementation will spur lawsuits. Some environmental NGOs (e.g., Western Environmental Law Center, Sierra Club, Center for American Progress, Harvard's Electricity Law Initiative) have suggested that the EO is at odds with the Administrative Procedure Act, the law which governs how federal regulations are promulgated, enforced and repealed. The nonprofit group Public Citizen has already filed suit.

ERM concluding insight:

If unchallenged, the Executive Orders taken together could dramatically rewrite energy policy at the state and federal levels. We expect that many of the EOs and their implementation will be challenged in court and expect none to have immediate effect other than at federal agencies responsible for studying or planning how to effectuate them.

Stay abreast of developments that affect your area of business. ERM's experts can help your company keep track of policy changes at the federal and state levels, and help you comply with the evolving regulations pertaining to you. Sustainability is our business.



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