



K&L GATES

# ENERGY POLICY IN THE TRUMP ADMINISTRATION: NUCLEAR ENERGY

May 1, 2025

## PRESENTED BY:

Matthew Leggett, Partner  
Tim Peckinpaugh, Partner  
Thomas Allen, Partner  
Martha "Marty" Pugh, Partner



# Panelists



**Matthew Leggett**

Partner

(202) 778-9087

[matt.leggett@klgates.com](mailto:matt.leggett@klgates.com)



**Tim Peckinpaugh**

Partner

(202) 661-6265

[tim.peckinpaugh@klgates.com](mailto:tim.peckinpaugh@klgates.com)



**Thomas Allen**

Partner

(202) 778-9188

[thomas.allen@klgates.com](mailto:thomas.allen@klgates.com)



**Martha "Marty" Pugh**

Partner

(202) 778-9033

[marty.pugh@klgates.com](mailto:marty.pugh@klgates.com)





# Key Players





# Energy Secretary Chris Wright



- CEO of hydraulic fracturing company Liberty Energy
- Bachelors and Masters Degree in Electrical Engineering from MIT
- Previously served on the board of Oklo, an advanced nuclear start-up.
- Stated priority of unleashing commercial nuclear power
  - Will be working alongside Ted Garish, nominee for Assistant Secretary for Nuclear Energy

# Interior Secretary Doug Burgum



- As the chairman of a newly established National Energy Dominance Council as well, Burgum will have a czar-like position to coordinate Trump's energy initiatives
- Served as North Dakota Governor (2016-2024)
  - As Governor, stressed an “all-of-the-above” energy policy to achieve carbon neutrality in the state by 2030.
  - Argued this was necessary to achieve energy independence and is what made sense “for the markets”.

# NRC Commissioners



Commissioner Annie Caputo (R)  
Term Expires: June 2026



Chairman David Wright (R)  
Term Expires: June 2025



Commissioner Christopher Hanson (D)  
Term Expires: June 2029



Commissioner Bradley Crowell (D)  
Term Expires: June 2027



Commissioner Matthew Marzano (D)  
Term Expires: June 2028





# **Executive Orders**



# Deregulation

## Review, modify, rescind regulations (Unleashing American Energy EO)

- Any regulations, orders, guidance, policies, settlements, consent orders, etc., that “impose an undue burden” on identification, development, or use of domestic energy resources – i.e, oil, gas, coal, hydropower, biofuels, critical minerals, **nuclear energy**.

## Regulatory “sunset” provisions (Zero-Based Regulatory Budgeting EO)

- Directs ten energy and environment-focused federal agencies to incorporate a
  - 1-year sunset provision into existing covered regulations governing energy production by September 30, 2025
  - a 5-year sunset provision into new covered regulations.
- Targeted agencies include NRC, EPA, DOE, FERC, BLM, OSMRE
- Outlines specific statutes from which regulations emanate that shall be subject to
- Regulations that “sunset” shall not count towards the ten-for-one regulatory requirement



# Deregulation (cont'd)

## Identification of state and local laws that burden energy production (Protecting American Energy from State Overreach EO)

- Directs the Attorney General (AG) to identify all state and local laws or policies that burden domestic energy identification, siting, development, production, or use, and may be unconstitutional, federally preempted, or generally unenforceable
- Directs the AG to prioritize any state laws purporting to address “climate change,” “environmental, social, and governance (ESG),” “environmental justice,” “greenhouse gas emissions,” or state carbon penalties
- Directs the AG to submit a report regarding actions taken pursuant to this EO within 60 days

# Permitting Reform

## Efficient permitting (Unleashing American Energy EO)

- CEQ released interim final rule rescinding nearly 50 years of federal CEQ regulations, but does not prevent agencies from implementing NEPA pursuant to their own existing procedures.
  - Interim final rule does not seek to amend or undermine NEPA itself or any state NEPA analogs.
  - Interim final rule comes shortly after November 2024 DC Circuit ruling that CEQ has no authority to write regulations, and February 2025 USDC case striking down a 2024 NEPA rule from CEQ.
- CEQ-led working group to coordinate agency-level NEPA implementing regulations for consistency
- Expedite permitting approvals and meet deadlines established in the Fiscal Responsibility Act of 2023
- Prioritize efficiency and certainty over any other objectives, including those of activist groups, that could add delays and ambiguity

# Climate Policy Reversal

## Environmental analyses (Unleashing American Energy EO)

- Withdraw guidance on GHG monitoring/ measurement, “social cost of greenhouse gases”
- Reconsider “social cost of carbon” calculation in Federal permitting/ regulatory decisions
- Report “global effects” of rule, regulation, or action separately from domestic costs/ benefits
- Reconsider “Endangerment Finding”

## Rescinds Biden-Era Environmental EOs (Unleashing American Energy EO)

- Rescind Biden EOs and actions regarding climate change, clean energy, and federal sustainability
- Terminate contracts or agreements with third-partes on behalf of, and redirects or disposes of assets, funds, resources allocated to, entities or programs under Biden EOs abolished by the EO

## Withdraw from International Agreements (Putting America First in International Environmental Agreements)



# Oil & Gas Support

## Open federal lands for energy production (Unleashing American Energy EO)

- support oil & gas lease sales on public lands
- rescind withdrawal of certain areas of the OCS from oil & gas leasing
- reverse public land withdrawals

# Ensuring Accountability for All Agencies

Ensure “Presidential supervision and control of the entire executive branch”

## Regulatory review

- Requires all executive departments and agencies (including “independent” agencies) to submit for review all proposed and final significant regulatory actions to the OIRA before publication in the *Federal Register*

## Performance standards, management objectives, and apportionments

- OMB establishes and reports on performance standards and management objectives for independent agency heads
- OMB adjusts independent agency apportionments by activity, function, project, or object to advance the President’s policies and priorities

## Singular legal interpretations

- The President and the Attorney General shall set forth the authoritative and binding interpretations of the law for the entire executive branch

# Other EO Considerations

## Deregulate domestic mining (Unleashing American Energy EO)

- Directs agency heads to revise or rescind actions that burden domestic mining and processing of non-fuel minerals\*
- DOE shall ensure critical minerals projects, including processing, receive consideration of Federal support, contingent on availability of funds
- DOD shall supply a National Defense Stockpile of critical minerals

*\* Uranium is not generally considered to be a “non-fuel mineral” so is not necessarily included in the domestic mining deregulation under this EO. However, the EO does require agencies to address “undue burdens” to the development of domestic energy resources, including “nuclear energy resources,” which may include uranium. In addition, the EO requires the U.S. Geological Survey to consider update the list of “critical minerals” to include uranium, suggesting the mineral could be provided with a pathway to mining deregulation under the EO as a critical mineral in the future.*



# Other EO Considerations

## National Energy Emergency (Declaring a National Energy Emergency EO)

- Declares a national energy emergency under the National Emergencies Act, granting agencies additional emergency authority to support the development of “energy” or “energy resources,” which are defined terms that
  - do not include nuclear energy resources
  - do include “uranium”
  - do include “crude oil, natural gas, lease condensates, natural gas liquids, refined petroleum products... coal, biofuels, geothermal heat, the kinetic movement of flowing water, and critical minerals”
- Requires agencies to facilitate domestic energy production on Federal and other lands, including with eminent domain and Defense Production Act authorities
- Requires agencies to expedite completion of authorized and appropriated infrastructure, energy, environmental, and natural resources projects, including to facilitate supply, refining, and transportation of energy in and through the West Coast, the Northeast, and Alaska

# **On the Horizon: Nuclear EO?**

**It is possible that the Trump administration will issue an executive order that specifically addresses nuclear power and the nuclear industry, similar to previous executive orders targeting coal, natural gas, and other energy sources.**



# **Government Action**





# Nuclear Regulatory Commission

- Certified NuScale's SMR Design in 2023 (first SMR receive NRC approval)
  - NRC currently reviewing two additional SMR applications (Kairos Hermes 2 and Rolls-Royce)
  - NRC engaging in pre-application activity with 30 advanced reactor pre-applicants
- Implementing 2024 ADVACE Act to expedite advanced reactor technology licensing
- Published 2025 proposed fee schedule to reduce hourly fees for advanced reactor applicants and pre-applicants by 50%.

# New Rules: Advanced Reactor Technology

## Proposed Rule: Risk Informed, Technology-Inclusive Regulatory Framework for Advanced Reactors

- Creates *10 C.F.R. Part 53* for advanced reactor licensing
- Probabilistic Risk Assessment
  - Departure from Parts 50 and 52 – applicants able to demonstrate safety standards for new , first-of-kind reactors without strict adherence to prescribed, sometimes outdated safety frameworks
  - Written to allow for flexibility; assessment specific for applicant reactor
- Allows application combinations for “common design”
- Permits applicants to apply through the new licensing path (Part 53) or utilize existing pathways (Parts 50, 52)
- Final Rule expected late 2027

# New Rules: Fusion Machines

- NRC Amending “Byproduct Material” rule (*10 C.F.R. Part 30*) to create a separate application for fusion machines
  - Avoids “burdensome” licensing requirements for traditional fission reactors
  - Under the ADVANCE Act, fusion machines regulated like particle reactors
- Proposed Rule publication expected May 2025



A worker inside the DIII-D vessel (photo credit: DIII-D National Fusion Facility)



# Department of Energy

- Issued RFI to construct Federal Consolidated Interim Storage Facility for spent nuclear fuel
- Approved loan disbursement in March to restart Palisades Nuclear Plant in Covert, Michigan
- Announced \$900 million solicitation to support deployment of SMRs
- Finalized contracts to distribute high-assay low-enriched uranium (HALEU) to domestic reactor developers
- DOE Advanced Reactor Demonstration Program has provided \$3 billion in support for advanced reactor demonstrations for TerraPower and X-Energy

# Nuclear Tax Incentives

- Includes provisions on new nuclear production tax credits (“**PTCs**”)
  - Based on amount of eligible item produced
  - Taken annually for a fixed number of year beginning on the date the property is placed in service
  - No recapture
- Provides bonuses for compliance with prevailing wage and apprenticeship (“**PWA**”) and domestic content requirements and facilities located in an energy community
- Enacted rules regarding transferability and direct pay

# Section 45U PTC

- Zero-emission nuclear power production credit for existing nuclear facilities
- .3 cents multiplied by the kilowatt hours of electricity produced at a qualified nuclear power facility and sold to an unrelated person minus the reduction amount
- Qualified nuclear power facility must have been placed in service before enactment of IRA in 2022
- PWA requirements do not encompass construction for this credit

# Section 45Y PTC

- Clean electricity production credit for new facilities placed in service after December 31, 2024
- .3 multiplied by the kilowatt hours of electricity produced at a qualified facility and sold to an unrelated person or sold, consumed or stored by a taxpayer with a metering device monitored by a third party
- 1.5 cents for 1 megawatt facilities, facilities that began construction before January 30, 2023 or that meet PWA
- Electricity produced by new units and additions to capacity for facilities placed in service before January 1, 2025 is also eligible



# PWA – Prevailing Wage

- Multiplies base credit rate by 5x
- Must pay prevailing wages to laborers and mechanics employed in the construction, alteration or repair of a qualified facility occurring during the “tax credit period”
- Payments to cure non-compliance
  - Correction = shortfall of wages plus interest
  - Penalty = \$5,000 per worker not paid prevailing wages
- Taxpayer and any contractors or subcontractors must follow the record keeping requirements

# PWA – Apprenticeship

- Apprentices must come from registered apprenticeship programs
  - Good faith effort exception for requests every 120 days
- 15% of all labor hours must be completed by qualified apprentices
  - Penalty payment to cure noncompliance = \$50 per labor hour shortfall
- Must employ at least 1 apprentice if 4 or more workers are employed in construction, alteration or repair
- Must comply with apprentice-to-journeyworker ratios

# Domestic Content Bonus

- Adds 10% to the base credit
- All structural steel and iron used in construction of a facility must be produced in the USA
- 40% of all “manufactured products” that are “components” of a facility must be produced in the USA
- Interpreted in a manner “consistent with” the Buy America Requirements under 49 C.F.R. 661.5

# Energy Community Bonus

- Adds 10% to the base credit if PWA is met or 2% otherwise
- Available for facilities located in
  - Brownfield sites
  - Areas with high unemployment and dependence on fossil fuels for jobs or tax revenue
  - Areas near coal mines that have been closed or coal-fired electric generation facilities that have been retired
- IRS mapping tool plots eligible areas and is user friendly



# Transferability

- Available for Section 45U PTC and Section 45Y PTC
- Transfer must be to an unrelated party for cash on a transfer election statement attached to a timely filed tax return
- Payment is not included as income to seller and is not deductible for buyer
- Can transfer all or a portion of a tax credit but cannot transfer only a portion attributable to a bonus
- Subsequent transfers are not permitted
- Typically involves tax credit insurance or a guaranty by a creditworthy seller party

# Direct Pay

- Available to tax-exempt organizations, a State or political subdivision, a local government, an Indian tribal government, an Alaska Native Corporation, the Tennessee Valley Authority, a rural electric co-op, a U.S. territory or an agency or instrumentality of a state, local, tribal, or territorial government
- Allows taxpayers with no tax liability to receive direct payments from Treasury (i.e., the credits are refundable)

# Investing in SMRs

## Advantages of SMRs

- Scalability
  - Allows for flexibility in project staging and investments.
  - Additional modules can be plugged
- Construction
  - Factory pre-fabrication
  - Shorter construction periods
  - Site flexibility
- Safety
  - Less reliance on active cooling
  - Simpler Design
- Cost
  - 40% of Cap-Ex of large reactors
    - Reduced field work
    - Reduced infrastructure investment
    - Lower amount of civil works

## Potential Risks of SMRs

- Limited operational experience.
- Variety of FOAK (first-of-its-kind) designs may cause long licensing timetables.
- Some of the new designs use fuel that doesn't have a reliable U.S. supply chain – HALEU
- Challenges persist regarding financing and cost control.



# Industry Discussion





# Industry Discussion

- How important are the Price-Anderson Act developments?
  - 40-year extension for NRC licensees and contractors passed in 2024
  - Expansion of PAA contractor indemnification by the Federal Circuit Court of Appeals
- How much of a problem does nuclear waste present today?
- Focus has been on SMRs, but what about conventional nuclear reactors, and recommissions and uprates for existing ones?
- What will the renewed focus on bringing natural gas online to support the electric grid mean for the financing of nuclear projects?
- Have there been any major recent international developments in the nuclear industry?
- Is increased demand for nuclear energy to power data centers and manufacturing enough to support the long-awaited nuclear renaissance in the United States?

# K&L Gates Nuclear Resources

## Nuclear Industry Alerts:

- *Going Nuclear – Industry Outlook and Issues*
  - <https://www.klgates.com/Going-NuclearIndustry-Outlook-and-Issues-4-9-2025>
- *Expanded Interpretation of Price-Anderson Act Is Another Positive Sign for Commercial Nuclear Development in the United States*
  - <https://www.klgates.com/Expanded-Interpretation-of-Price-Anderson-Act-Is-Another-Positive-Sign-for-Commercial-Nuclear-Development-in-the-United-States-3-10-2025>



**QUESTIONS?**



# Up Next: Electricity, Transmission, and Data Centers

Join us on **Thursday, 8 May from 12:00-1:00** for our discussion on changes in federal policy and regulation for the United States electrical grid and transmission infrastructure under the Trump administration. Our speakers will analyze the effects of several key executive orders and agency actions on improving grid infrastructure, increasing baseload power sources, and the importance of AI data centers.

Partners from our Washington, D.C., Public Policy and Law practice and our Power practice will offer their insights into the current political and regulatory environment, the lasting effects of the Trump administration's policies, and what the future holds for the United States electrical grid.

# Looking Ahead: Webinar Series

Session 5 - Electricity, Transmission, and Data  
Centers (5/8, 12:00-1:00)

Session 6 - Critical and Fuel Minerals (5/15, 12:00-1:00)

Session 7 - Renewable Energy (5/22, 12:00-1:00)