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President Trump's Executive Order on Promoting Energy Independence and Economic Growth

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Executive Summary

On March 28, President Trump signed a sweeping Executive Order entitled "Promoting Energy Independence and Economic Growth" (EO) that requires federal agencies to identify and reconsider all actions "related to or arising from" the Obama Administration's Climate Action Plan. Specifically, the EO targets for elimination or revision: (i) EPA's Clean Power Plan (CPP); (ii) EPA's regulation of methane emissions from new and modified oil and gas wells; (iii) The Bureau of Land Management's (BLM) regulation of all methane emissions from oil and gas wells on federal and tribal land; and (iv) BLM's Hydraulic Fracturing Rule regulating fracturing on federal and tribal land. The EO also immediately rescinds certain regulatory actions not subject to legal challenge including guidance that required federal environmental reviews of projects to incorporate a greenhouse gas lifecycle analysis, and a requirement that a "social cost" of carbon or methane be used to justify policies to reduce greenhouse gas emissions. Significantly, the EO also initiates a White House-led process to review regulatory and policy actions of ***all*** federal agencies that "potentially burden" the development or use of domestic energy resources including oil and natural gas. This process could culminate in the rescission or revision of additional regulatory and policy actions.

Most attempts to rescind or revise final rules will be challenged in the courts. Even if legal challenges can be overcome, the regulatory process initiated by the EO to unwind and replace these rules could take several years. Additional delay may be caused by a hiring freeze currently in effect within already-understaffed and demoralized federal agencies. These agencies are likely to shrink further in accordance with the President's proposed budget cuts. Nevertheless, this process could result in a regulatory roll-back benefitting BP's US businesses significantly. Until the new rules are finalized, and unless successfully stayed in the interim, BP may have to comply with existing rules.

Key Provisions of the EO

<u>Reconsideration of the Clean Power Plan (EO Sec. 4)</u>

A central focus of the EO is the Clean Power Plan (CPP), which established national standards limiting carbon emissions from existing coal and natural gas-fired power plants. The EO orders EPA to review the CPP rule for consistency with the EO's policy statements and to propose a rule to revise or rescind the CPP.

The US Supreme Court stayed implementation of the CPP in February 2016 pending completion of legal challenges brought by industry groups and 24 states. The US Court of Appeals for the District of Columbia Circuit (DC Circuit) heard argument on the CPP's validity in September 2016 and has yet to issue a decision. The EO authorizes the US Attorney General to provide notice of the EO to the DC Circuit and request the court to stay or otherwise delay litigation in any cases challenging the above rules, pending completion of the administrative process. On March 28, the Justice Department requested the court "to hold the cases in abeyance."

While the EO requires EPA to reconsider the CPP, it provides no guidance as to which legal or factual issues EPA should re-examine. The EO does not specify whether EPA should pursue a strategy of "repeal and replace," or simply "repeal," of the CPP which leaves EPA with an array of options with different policy ramifications and degrees of litigation risk.

EPA Methane Regulation (EO Sec. 7(a))

EPA is directed to review its methane emission control rule for new oil and gas wells, finalized in May 2016, and to propose a new rule revising or rescinding the existing rule. These were EPA's first-ever methane standards for new, modified, and reconstructed sources and were aimed at reducing US methane emissions by 40-45% (from 2012 levels) by 2025 in accordance with the Obama Administration's Methane Action Plan.

BLM Methane Regulation (EO Sec. 7(b)(iv))

The EO instructs DOI to review the BLM's rule controlling methane from all oil and gas sources on federal land, finalized in November 2016, and to propose a new rule revising or rescinding that rule. The existing rule was strongly opposed by industry because it overlapped and conflicted with EPA regulation in this space which BP agreed should occupy the field. Interior Secretary Zinke has already ordered his agency to review the existing rule by mid-April to determine consistency with US policy set forth in the EO.

The House of Representatives voted in February 2017 to approve a Congressional Review Act (CRA) resolution against the rule, which is now pending in the Senate. If Congress were to rescind the BLM rule under the CRA, further action by DOI would be unnecessary. Whether Congress is able to repeal the rule in light of the EO and difficulty already encountered in rounding up the necessary votes, remains uncertain.

DOI/BLM Hydraulic Fracturing Regulation (EO Sec. 7(b)(i))

DOI is also directed to review a 2015 BLM rule regarding hydraulic fracturing on federal and tribal lands. The rule imposes stringent well casing and wastewater storage requirements and requires drillers to publicly disclose chemicals used in hydraulic fracturing within 30 days of completing operations. It also mandates stricter storage protocols for recovered waste water and requires drillers to submit detailed information on the geology, depth, and locations of existing wells

In early March, 2017 the new administration sought a temporary abeyance from a federal court in a legal challenge to the rule, explaining that it does not align with current policies. The court then canceled scheduled oral argument.

"Social Cost of Carbon" budgeting metric (EO Sec. 5)

The EO does away with a budgeting metric used by the Obama administration to assign a dollar amount to the economic impact of CO2 pollution known as the "social cost" of carbon and formally disbands the Interagency Working Group on the Social Cost of GHG Emissions. EPA had determined the social cost of carbon values (in 2007 dollars per metric ton CO2) as $36 for 2015 and $42 for 2020. Measures to reduce greenhouse gases costing industry less than $36 per ton of carbon equivalent were viewed as worthwhile because they result in a net benefit to society by avoiding greater economic costs associated with the contribution of those greenhouse gases to climate change. Agencies are now directed to rely exclusively on a 2003 OMB Circular which provides best practices for conducting regulatory cost-benefit analysis.

Greenhouse Gas Guidance (EO sec. 3(c))

The EO rescinds guidance, finalized in August, 2016, on how agencies should consider greenhouse gas emissions and the effects of climate change in preparing environmental reviews required by the National Environmental Policy Act It signals a determination to reduce the role climate change plays in analysis of federal agency actions. The CEQ guidance had provided methods for agencies to use in describing and quantifying greenhouse gas emissions or projected climate change impacts resulting from proposed federal actions and provided that agencies should use quantitative rather than qualitative methods to assess greenhouse gas emissions.

What the EO Could Means for U.S. Energy Policy and Natural Gas Development

The Clean Power Plan (CPP) was the centerpiece of President Obama's strategy to meet internationally-agreed US targets to reduce greenhouse gas emissions. Promulgated under the Clean Air Act, it requires deep reductions in CO2 emissions from existing power plants accounting for roughly one-third of total US greenhouse gas emissions by: (i) further shrinking US reliance on high-emitting coal-fired power plants, many of which have been retired; and (ii) replacing coal with lower-emitting fuels in power generation, notably renewables and, in the near term, natural gas.

The Trump Administration's approach is more heavily tilted in favor of gas but also coal and nuclear. Though the EO seeks to boost coal (and deemphasizes renewables), it is hard to see how it could greatly impact the move away from coal toward natural gas and, to a lesser extent, renewables. Energy prices will likely render investments in new coal-fired power plants impractical and lead utilities to continue to build new capacity using natural gas, wind, and solar, depending upon the relative economics of these sources at the time. The price of natural gas is historically low, the capital cost of wind and solar is dropping, and methods to resolve the intermittency of wind and solar are improving. Moreover wind and solar are eligible for tax credits, extended last year by Congress for a five-year period. (Those credits could potentially be phased out earlier as part of tax reform legislation promoted by the Trump Administration.) In the short run, however, this action may mean that coal will be dispatched more than it would have been otherwise. It may also prolong the life of some older coal plants and delay inside-the-fence line efficiency improvements at plants that stay in operation.

Impacts on BP

- The EO should not greatly impact continued switching from coal to gas in the US power sector. A decline in coal use and further plant closures could be slowed.

- Burdensome federal regulatory action affecting BP will no longer be driven by national GHG emission reduction goals agreed to internationally without input from those business sectors most affected by the agreements.
- BP should realize significant cost savings, over time, from rescission of the BLM hydraulic fracturing rule and the BLM methane rule as well as from revision of the EPA methane rule. However, unless these rules are rescinded or replaced and successfully stayed in the meantime, BP may continue to incur costs in complying with existing rules.
- Significant regulatory relief and attendant cost savings should be realized as environmental reviews of projects are no longer subject to White House guidance on how to consider GHG emissions and the effects of climate change, or required to use a "social cost" of carbon or methane in cost calculations.

Redacted - First Amendment

Conclusion

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