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Ore. Judge Says DOD Wind Project Blockage Was Unlawful

By **Madeline Lyskawa**

Law360 (August 6, 2026, 8:34 PM EDT) -- An Oregon federal judge on Thursday halted the U.S. Department of Defense's freeze of wind projects, finding renewable energy groups and environmental nonprofits are likely to succeed in showing the agency violated deadlines for reviewing the projects' impact on military readiness.

U.S. District Judge Karin J. Immergut's opinion said that even if the DOD reasonably explained its decision to stop reviewing proposed wind energy projects, the agency still violated statutory and regulatory deadlines established by Congress that govern the review process.

"Congress established a statutory scheme for DOD to assess national security concerns arising from energy projects, and DOD promulgated regulations that are also binding on the agency. DOD cannot pick and choose which parts of this legal regime to follow. It must adhere to the entire regime, which includes the various statutory and regulatory deadlines governing the review process from start to finish," Judge Immergut said.

"At this stage of the litigation, plaintiffs have demonstrated that DOD has not resumed its preliminary review of wind energy projects, or at the very least, DOD has not conducted its preliminary review in accordance with the 75-day statutory deadline," the judge said.

Judge Immergut ordered the DOD to provide a status report every 30 days addressing whether its review of wind energy projects has resumed.

The same day the judge issued her decision, Germany-based RWE Americas LLC announced that it has agreed to give up its wind leases off the coasts of New York, California and Louisiana in exchange for a $1.2 billion payment from the Trump administration, the latest in a string of payments from the government targeting wind energy.

The case stems from the Ike Skelton National Defense Authorization Act for fiscal year 2011, which requires the DOD to preliminarily review proposed energy project applications within 75 days to determine whether they would hurt military operations and readiness.

While the DOD had been evaluating wind energy project applications in accordance with Congress' statuary scheme and stuck to a predictable timeline for its review, Judge Immergut said things changed in August 2025, when the DOD incrementally stopped processing proposed wind energy projects. By May, the review of wind energy projects stopped completely.

The wind energy trade associations and environmental nonprofits sued the DOD that month, alleging the agency's review freeze constitutes an unlawful final agency action and that the failure to meet the statutory and regulatory deadlines constitutes unlawful withholding of required agency action. Since then, 20 wind energy project developers have joined as plaintiffs, Judge Immergut said.

The developers and green groups filed their motion for stay or preliminary injunction in June.

Nearly 20 states — led by Oregon and joined by California, New York, Illinois, New Jersey, D.C. and a dozen others — also filed a motion to intervene in the case in July, saying they have "authority over electricity generation within their borders" and that the "wind freeze" hinders their ability to implement their own energy policies. The judge has not ruled on their motion.

The DOD responded to the suit with a motion to dismiss in July, arguing that the claims should be channeled to the Ninth Circuit thanks to a jurisdiction-channeling provision of the Federal Aviation Act, and that the complaint makes a broad programmatic attack on the department's review process rather than an attack on a discrete agency action.

But Judge Immergut rejected these arguments on Thursday, saying the DOD entirely omitted "Ninth Circuit case law that has already established the boundaries of the jurisdiction-channeling provision specifically at issue in this case."

Specifically, under the Ninth Circuit's 2008 decision in Ibrahim v. Department of Homeland Security, this court has jurisdiction over the claims because they challenge an action by the DOD, which is not part of the Transportation Security Administration or the Federal Aviation Administration, the judge said.

The DOD is also incorrect in its characterization of the challenge as a broad programmatic attack, Judge Immergut said.

"Here, plaintiffs challenge a particular agency action 'with broad application': DOD's stoppage of reviewing all wind energy projects. ... The 'broad application' of DOD's review freeze does not transform plaintiffs' attack on a particular agency action into a broad programmatic attack on an agency's operations," the judge said.

Judge Immergut further rejected the DOD's argument that the plaintiffs haven't challenged a final agency action, saying "the review freeze marks the consummation of the agency's decisionmaking process," and that it's "a decision 'from which legal consequences will flow.'"

In response to the ruling, Phelps Turner, a senior attorney at the Environmental Defense Fund, which filed an amicus brief in support of the plaintiffs, said in a statement that the court has stopped the Trump administration from "misusing a long-standing review process to block the clean, affordable power that Americans need."

"For months, wind projects capable of supplying millions of homes and businesses with low-cost power have been needlessly obstructed, as electricity costs and demand soar," Turner said. "This challenge has been about making sure the national security review process remains thorough, transparent, and timely, so it can continue delivering what it has for years: a reliable framework that supports America's energy security."

A DOD spokesperson declined to comment. Representatives for the plaintiffs and the U.S. Department of Justice did not immediately respond to requests for comment on Thursday.

The plaintiffs are represented by Douglas A. Hastings, Michael Giaquinto, Jennifer Trock and Ella Foley Gannon of Morgan Lewis & Bockius LLP.

The federal government is represented by Shawn Ren of the U.S. Department of Justice.

The case is Renewable Northwest et al. v. Hegseth et al., case number 3:26-cv-01092, in the U.S. District Court for the District of Oregon.

--Additional reporting by Nadia Dreid and Hailey Konnath. Editing by Emily Kokoll.

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