

ISSUES AND COMPLIANCE FOR RENEWABLE PROJECTS RELATING TO EXECUTIVE ORDER ON SECURING THE U.S. BULK POWER SYSTEM

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Breaking News Update Regarding Bulk-Power System Executive Order

- This presentation was prepared before President Biden's inauguration.
- On January 20, 2021, President Biden issued an "Executive Order on Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis" that "directs all executive departments and agencies (agencies) to immediately review and, as appropriate and consistent with applicable law, take action to address the promulgation of Federal regulations and other actions during the last 4 years that conflict with" certain national objectives set out in the order.
- The Biden Order specifically provides: **"Executive Order 13920 of May 1, 2020 (Securing the United States Bulk-Power System), is hereby suspended for 90 days. The Secretary of Energy and the Director of OMB shall jointly consider whether to recommend that a replacement order be issued."**

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Agenda

- Overview of the Executive Order 13920 “Securing the United States Bulk-Power System” (E.O. 13920)
- CFIUS-Like Screening Process
- Equipment and Projects Likely to be Affected
- Country Nexus
- Impact of E.O. 13920 on Contracts for Supply of Equipment Potentially Subject to the Order
- Risk Assessment Factors
- Conclusion

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Overview

- E.O. 13920 issued May 1, 2020 to address perceived national security concerns related to China and U.S. critical infrastructure (also reflected in recent changes to the jurisdiction and role of the Committee on Foreign Investment in the United States (CFIUS)).
- E.O. prohibits the “acquisition, importation, transfer, or installation of any bulk-power system (BPS) electric equipment” by any person, or with respect to any property, subject to U.S. jurisdiction, that is “designed, developed, manufactured, or supplied, by persons owned by, controlled by, or subject to the jurisdiction or direction of a foreign adversary,” if Department of Energy (DOE) determines that any such transaction poses certain undue or unacceptable risks.
- Equipment installed prior to May 1, 2020 not currently prohibited, and any immediate “rip and replace” actions premature.

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Overview (cont.)

- In ex parte meetings between DOE and stakeholders, Assistant Secretary Bruce Walker stated that there are four pillars to E.O. 13920:
 - Prohibiting BPS electric equipment with a nexus with any foreign adversary that poses an undue risk to national security, the economy, or the American people;
 - Authorizing the Secretary of Energy to establish criteria for recognizing particular equipment and vendors as "pre-qualified;"
 - Identifying any now-prohibited BPS equipment already in use, allowing the government to develop strategies, and to work with asset owners to identify, isolate, monitor, and replace this equipment as appropriate; and
 - Establishing a Task Force on Federal Energy Infrastructure Procurement Policies Related to National Security, which will focus on the coordination of federal government procurement of energy infrastructure and the sharing of risk information and risk management practices.

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Overview (cont.)

- On July 8, 2020, DOE issued a Request for Information (RFI).
- The goal of the RFI was to gather information to identify critical infrastructure that could potentially be compromised by foreign adversaries, and to help DOE work toward a federal plan to mitigate any such potential compromise.
- DOE received 98 comments. Sample comment:
 - "Ultimately, the best approach is to evolve away from a vendor trust-based model, which priorities lightweight assessment of vendor processes, to a more robust and comprehensive approach, where every device and software application being placed within the BPS networks is being screened continuously for real threats and vulnerabilities." Finite State - DOE RFI DOE-HQ-2020-0028 Response

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