

Energy Law: Month in Review - August 2025

AUTHORS [Zev Simpser](#), [Brian Bell](#), and [Nathan Webster](#).

Welcome to Dorsey's Energy Law: Month in Review. We provide this update to our clients to identify significant developments in the previous month. Please reach out to any of the authors, listed above, to discuss these issues.

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LITIGATION AND DISPUTES

Pennsylvania Appeals Court Affirms Pennsylvania Public Utility Commission Regulations

The Pennsylvania Public Utility Commission (PAPUC) recently promulgated regulations that assign grid improvement and connection costs to customers with systems that generate excess energy for sale to distribution companies. Certain of these customers contended that the regulations violated Pennsylvania's Alternative Energy Portfolio Standards Act by imposing interconnection costs on customers rather than electricity distribution companies and ratepayers. These petitioners instead asserted that the costs were indirect costs that should have been recovered from ratepayers. The petitioners protesting the promulgated rules contended that the Alternative Energy Portfolio

Related Capabilities

- Energy & Natural Resources
- Electric Power
- Environmental, Social, Governance (ESG)
- Sustainability

Standards Act requires interconnection costs to instead be paid by ratepayers as a cost of generation supply. The state appellate court disagreed, ruling on August 13 that the Act did not prohibit the PAPUC from assigning grid improvements and connection costs to customers generating excess energy for sale to distribution companies. The court also noted that accepting the petitioner's interpretation could lead to an absurd result, stating that "although petitioners currently limit their argument to interconnection costs as being an indirect cost of alternative energy, the logical extension of their position is that all costs associated with project development – construction, financing, and operation of a customer-generator system – would similarly qualify as indirect costs."

California High Court Asserts Judicial Oversight Over Public Utilities Commission

California's Supreme Court recently curtailed the deference that the state judiciary owes to the California Public Utilities Commission (CPUC) in an August 8 [decision](#). The underlying dispute involved the compensation that California utilities pay for excess power generated by rooftop solar operations. In 2022, the CPUC adopted a tariff greatly reducing the price utilities pay for this excess power. Various environmental groups sued. The district court deferred to the CPUC's determination under a 1968 California Supreme Court decision—*Greyhound Lines Inc. v. Public Utilities Commission*—which stated that CPUC interpretations of the public utilities code "should not be disturbed unless it fails to bear a reasonable relation to statutory purposes and language." The Supreme Court, however, examined numerous legislative developments expanding judicial review, and concluded that the significant deference afforded by the *Greyhound*-court was no longer appropriate. The court instead directed future tribunals to apply the standard articulated in the 1998 *Yamaha Corp. of America v. State Bd. of Equalization*, which affords agencies significantly less deference.

REGULATORY DEVELOPMENTS

Treasury Adjusts Rules for Wind and Solar Tax Credits

On August 15, the U.S. Treasury Department released updated [guidance](#) governing the eligibility of wind- and solar-energy projects for 45Y and 48E tax credits. 45Y and 45E Tax Credits are technology-neutral tax credits under the Inflation Reduction Act and require the commencement of construction as a precondition to eligibility. Under previous guidance, developers needed to establish expenditure of at least 5% of the project budget to be eligible for the credits. The new guidance replaced the simple 5% expenditure threshold with a more qualitative requirement that "physical work of a significant nature" has begun to establish the commencement of construction. Only solar projects with less than 1.5 MW of output may still establish the commencement of construction through the expenditure of 5% of total cost.

Trump Administration Considers Axing Solar Funds

The Inflation Reduction Act established a \$7 billion Solar for All fund, which confers funding on recipients to facilitate solar adoption by low-income communities. The Trump administration froze the funds in February 2025. The Trump administration unfroze the funds in response to court orders. But the Environmental Protection Agency (EPA) announced in a [video](#) in August that it was terminating the program, arguing the One Big

Beautiful Bill Act authorizes the termination. Numerous advocacy organizations are threatening lawsuits over the refreeze.

Duke Energy Seeks Merger

On August 14, Duke Energy filed requests with state and federal regulators seeking approval to combine two constituent utilities serving the Carolinas: Duke Energy Carolinas and Duke Energy Progress. The resulting entity would supply electricity to nearly five million customers, and Duke asserts that the merger would precipitate customer savings exceeding \$1 billion. The company also contends that the merger will improve reliability and efficiency within the companies' 52,000-square-mile service area. Duke has operated the two subsidiaries independently since 2012 and, despite consolidation of corporate functions, the operation and planning of power grids continue to remain separate. Duke states that this continued bifurcation limits the cost- and energy-saving potential of the entities. The merger requires approval from the North Carolina Utilities Commission and the Federal Energy Regulatory Commission.

FERC Allows Reactivation of Iowa Nuclear Plant to Proceed

The Federal Energy Regulatory Commission (FERC) approved a waiver request on August 25 that will allow the reopening of the Duane Arnold nuclear power plant in Palo, Iowa. Economic forces caused the closure of the plant in 2020, and the owner subsequently planned to use the plant's interconnection for solar energy. Changing economic conditions, however, have caused the owner—NextEra Energy—to pursue reopening of the nuclear facility. Accordingly, NextEra sought (and received) a waiver to use Midcontinent Independent System Operator's generator replacement process to consolidate the solar interconnection agreements with an additional interconnection agreement for the nuclear power plant. The next step in reopening the nuclear facility requires restoration of the plant's operating license by the Nuclear Regulatory Commission

FERC Approves Cost Allocation Paths for Post-Shutdown Power Plants

FERC recently approved pathways to recover costs of compliance with a U.S. Department of Energy order mandating the continued operations of power plants that were slated for retirement. The Department of Energy ordered the continued operation of the plants in an emergency order, stating that energy shortages grid reliability required that the plants remain in operation. Consequently, the 1,560-MW J.H. Campbell plant in Michigan has incurred substantial costs after being ordered by the Department to continue operations after its projected retirement date. Pursuant to FERC's order, those costs will now be shared across MISO's northern and central regions. FERC declined calls to limit the cost allocation to Michigan or to mandate participation of MISO's southern region.

New York Regulators Slash Utility Rate Requests

In two mid-August decisions, the New York Public Service Commission (NY PSC) adopted joint proposals that cut two utilities' requested rate increases substantially. In the first case, National Grid had requested a base delivery increase of \$509.6 million (25.5 percent delivery or 10.4 percent total revenue) and \$156.5 million (29.7 percent delivery

or 15.7 percent total revenue) for electric and gas, respectively for one year. The NY PSC instead adopted a levelized approach, authorizing more modest increases of \$167.3 million in the first year, \$297.4 million in the second year, and \$243.4 million in the third year. In approving the modified, levelized approach, NY PSC staff scrutinized the proposed rate increase and limited recoverable expenses to those necessary to provide safe and reliable service. The NY PSC also approved a joint proposal in Central Hudson Gas & Electric Corporation rate case, reducing the company's request for total electric delivery revenues by over \$17.5 million and total gas delivery revenues by nearly \$800,000 in the first year.

California Expands Electric Vehicle Charging

California has officially launched an expansive infrastructure program designed to expand electric-vehicle charging resources. The initiative will disburse \$55 million dollars and provide compensation for installation of electric-vehicle chargers to businesses and public entities at public sites throughout the state. The program requires that sites be publicly accessible. Eligible locations include convenience stores, gas stations, retail centers, parking lots, and other high-traffic destinations. The program prioritizes sites in tribal areas, low-income communities, and other disadvantaged locations.