

Energy Law: Month in Review - February 2025

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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.

Table of Contents

- [Pennsylvania Successfully Sues Trump Administration Over Frozen Inflation Reduction Act Funding](#)
- [Texas Court of Appeals Rejects Municipal Seizure of Utility Company Streetlights](#)
- [FERC Authorizes PJM's Request for Fast-Track Interconnection Review](#)
- [White House Asserts Increased Control Over FERC](#)
- [FERC Approves PJM Capacity Market Proposal](#)
- [PJM Board Approves \\$6.7 Billion Transmission Expansion Plan](#)
- [New York Regulators Approve Energy Storage Implementation Plan](#)
- [Indiana Regulators Approve New Rules for Large Load Interconnection](#)
- [California Regulators Approve Transmission Planning Portfolio](#)
- [Colorado House Approves Bill Classifying Nuclear Energy as Renewable](#)
- [National Grid Sells U.S. Renewables Business to Brookfield](#)

LITIGATION AND DISPUTES

Pennsylvania Successfully Sues Trump Administration Over Frozen Inflation Reduction Act Funding

Pennsylvania Governor Josh Shapiro and four Pennsylvania state agencies [sued](#) various federal agencies on February 13 asserting that the agencies were unlawfully withholding funds from Pennsylvania for clean energy and emissions mitigation. The Inflation Reduction Act earmarked the funds, totaling over \$3.1 billion, for fiscal years 2022 through 2026. The freeze stems from an executive order stating that "all agencies shall immediately pause the disbursement of funds appropriated through the Inflation

Related Capabilities

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

Reduction Act of 2022 or the Infrastructure Investment and Jobs Act.” The Pennsylvania suit argues that this impoundment of funds already appropriated by Congress violates the U.S. Constitution. The suit names the U.S. Department of the Interior, the U.S. Environmental Protection Agency, the U.S. Department of Energy, the U.S. Department of Transportation, and the Office of Management and Budget (OMB)—and their respective heads—as defendants, and is venued in the Eastern District of Pennsylvania. The case appears to have succeeded already as an act of political maneuvering. On February 24, Governor Shapiro announced that the state had re-secured access to approximately \$2 billion of the frozen funds after holding talks with administration officials at the White House. Pennsylvania’s suit comes on the heels of another action brought by 22 state attorneys general contesting other non-energy-related spending.

Texas Court of Appeals Rejects Municipal Seizure of Utility Company Streetlights

A panel of the Texas Court of Appeals concluded that the City of Kileen, Texas, may not invoke sovereign immunity to avert liability in a suit to prevent the city from taking possession of streetlights owned by Oncor Electric Delivery Company, LLC (Oncor). In 2021, Kileen decided to assume ownership and management of the streetlight system through the exercise of its eminent domain authority and offered \$700,000 to Oncor in compensation. Oncor sued to prevent Kileen’s actions, claiming that the action was unconstitutional. Kileen invoked sovereign immunity. The Court of Appeals concluded that Oncor’s suit satisfied an exception to sovereign immunity that applied to condemnation actions as well as an exception applicable to claims for equitable relief. The court determined that sovereign immunity also did not apply because Texas law waives sovereign immunity when a party asserts a viable constitutional claim and, here, Oncor had viably asserted a takings claim.

REGULATORY DEVELOPMENTS

FERC Authorizes PJM’s Request for Fast-Track Interconnection Review

In an order dated February 11, 2025, the Federal Energy Regulatory Commission (FERC) approved PJM Interconnection, L.L.C.’s (PJM) proposal to expedite interconnection review for generation projects that are ready for construction, as well as a PJM proposal to revise Surplus Interconnection Service rules to expand grid access by using underutilized interconnection capacity. These proposals seek to address resource adequacy shortfalls by authorizing expedited interconnection review for up to 50 generating projects. PJM has represented that its efforts may onboard 10 GW of capacity 18 months earlier than would be possible under the typical Interconnection Service Rules. The proposals did not receive unanimous approval, however. Commissioner Judy Chang dissented from the decision, contending that the order facilitated “queue jumping.”

White House Asserts Increased Control Over FERC

On Tuesday, February 18, the White House issued an executive order requiring FERC (and numerous other executive agencies) to submit proposed and final significant regulatory actions to the OMB’s Office of Information and Regulatory Affairs. The executive order asserted that FERC exercised significant executive authority without adequate White House oversight, a practice the White House viewed as undermining

FERC's "accountability to the American People" and preventing "a unified and coherent execution of federal law." Accordingly, the OMB director will now "consult with independent regulatory agency chairmen and adjust such agencies' apportionments by activity, function, project or object as necessary and appropriate, to advance the president's policies and priorities." To that end, the OMB director will also assign standards for performance and management, and will report to the president on FERC's compliance with those standards.

FERC Approves PJM Capacity Market Proposal

FERC recently approved PJM's proposal to extend its capacity must-offer requirement to intermittent resources (e.g., solar and wind), storage resources, and hybrid resources. The capacity must-offer requirement mandates that generators with committed capacity offer their entire available capacity into the market for sale. FERC additionally approved PJM's proposal to update its market seller offer cap. The offer cap is a maximum offer price applicable, under certain conditions, to capacity sellers that PJM determines have market power. The offer cap seeks to prevent sellers who exercise market power from submitting offers that do not represent marginal costs. Prior to the revisions, market concentration meant that every sell offer for existing generation capacity resources had a ceiling equal to the offer cap, which limited participation in the capacity market. PJM now promises to impose an offer cap floor ensuring that the offer cap will never fall below the cost of obtaining a capacity commitment. This and other reforms to the offer cap have the goal of "[i]ncreasing the number of resources that participate in the capacity market," which, in turn, "will allow for more competition and, in turn, help ensure that the capacity market produces just and reasonable rates."

PJM Board Approves \$6.7 Billion Transmission Expansion Plan

PJM's board bolstered its attempts to improve reliability by approving \$5.9 billion in transmission projects. Accounting for other recent changes in existing-project costs, PJM's Regional Transmission Expansion Plan now consists of \$6.7 billion in projects. The recently approved plan includes a proposal by American Electric Power (AEP), Dominion Energy Virginia, and FirstEnergy to build a 765-kV transmission system that will cost approximately \$4.6 billion. This 765-kV transmission system will enhance west-east transmission. The specific investments included in this project include a 260-mile transmission line from West Virginia to Maryland and a 155-mile line from Campbell County to Fauquier County within Virginia. The plan also includes \$600 million in transmission investments by AEP utilities in Indiana, Ohio, and Virginia.

New York Regulators Approve Energy Storage Implementation Plan

On February 13, the New York State Public Service Commission (NYPSC) approved a proposed retail and residential energy storage implementation plan that seeks to increase retail storage deployment to 1,500 MW and residential storage deployment to 200 MW, each of which will contribute to the state's overall storage goal of 6 GW. The state's current operational battery energy storage capacity is 430 MW. The New York State Energy Research and Development Authority will begin implementation of the plan with the first of three annual bulk storage solicitations for deployment in 2027 and 2028. Implementation plans for other components of the state's energy storage goals (such as

bulk energy storage) are currently under review before the NYPSC.

Indiana Regulators Approve New Rules for Large Load Interconnection

On February 19, the Indiana Utility Regulatory Commission (IURC) approved a settlement agreement defining terms under which data centers and other large loads can connect to the grid. Indiana Michigan Power, the Indiana Office of Utility Consumer Counselor, Citizens Action Coalition of Indiana, Amazon Data Services, Google, Microsoft, and Data Center Coalition had filed the settlement agreement in November. The agreement requires large industrial loads to pay for grid upgrades necessary for their service and will preclude such costs from being passed on to consumers. The agreement applies to new or expanded facilities with contract capacity exceeding 70 MW, or a company aggregate of 150 MW. The agreement additionally requires IURC approval for reductions in large load customers' contracted peak capacity that exceed 20%. The agreement did not address cost-allocation issues, however, deferring those questions to future proceedings.

California Regulators Approve Transmission Planning Portfolio

On February 20, the California Public Utilities Commission (CPUC) approved an electric resource portfolio outlining the state's plans to increase clean-energy generation and storage resources. Specifically, the portfolio outlines plans to reduce greenhouse gas emissions by 45% by 2035 and decrease use of natural gas plants by 71% in the California Independent System Operator system. According to the CPUC, the portfolio seeks to "enable the transmission investment needed to bring online nearly 60 gigawatts of clean energy resources by 2035 as cost-effectively as possible, while driving deep reductions in natural gas usage."

Colorado House Approves Bill Classifying Nuclear Energy as Renewable

On Tuesday, February 25, the Colorado House of Representatives passed House Bill 1040 in a 43-18 vote. The bill would reclassify nuclear energy as a clean energy resource under Colorado's renewable energy standards. Legislators hope to incentivize new nuclear development as a way of meeting the state's goal of 100% renewable energy for large-scale utility companies by 2050. Reclassifying nuclear energy as clean energy will make nuclear projects eligible for clean-energy project financing and will permit utilities to include nuclear projects in their mandatory clean-energy minimums. The legislation has faced opposition from environmental groups, who testified against the bill at length in committee hearings. The bill now heads to the Senate, where it will be debated in committee before facing a vote before the full Senate.

DEALS

National Grid Sells U.S. Renewables Business to Brookfield

National Grid—a U.K. power company—announced that it will sell its U.S. renewables business, National Grid Renewables, to Brookfield Asset Management (Brookfield). Brookfield acquired the business for \$1.7 billion. National Grid Renewables has a portfolio (including assets in operation or under construction) of 1.9 GW of solar, 314 MW of wind, and 657 MW of storage. Brookfield has recently engaged in other similar transactions, investing billions of dollars in companies like Ørsted, Neoen, Duke Energy,

Scout Clean Energy, and Banks Renewables. The parties expect the transaction to be completed between April and October, 2025, depending on the pace of regulatory approvals. Brookfield's increased renewable capacity will help it satisfy commitments such as a recent corporate power purchase agreement with Microsoft.