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Energy Law: Month in Review - May 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.

Related Capabilities

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

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LITIGATION AND DISPUTES

D.C. Circuit Affirms FERC Rejection of Reimbursement Requests for Future Upgrades

At the end of May, the D.C. Circuit affirmed the Federal Energy Regulatory Commission (FERC)'s rejection of utilities' reimbursement request. New York Independent System Operator (NYISO) allows utilities to recover "reasonably incurred costs" for operating expenses, including those tied to transmission upgrades. Referencing this provision, several utilities requested reimbursement for the increased cost of capital caused by prospective risks from future grid upgrades. FERC rejected these requests in April 2021, leading to the appeal. The D.C. Circuit affirmed FERC, finding that prospective risks are not reimbursable expenses under the existing NYISO tariff. The court explained that the private utilities should bear the burden to any risks tied to the cost of capital and stated that the utilities' reasoning would lead to fundamental policy changes.

Tribes and Conservation Groups Avoid Dismissal of Power Line Lawsuit

On May 27, 2025, the Ninth Circuit reversed a lower court's dismissal of a suit challenging the Department of Interior (DOI)'s 2015 approval of a 520-mile transmission line route in New Mexico, Arizona, and California. The three-judge panel found that the plaintiffs had raised a plausible claim that DOI authorized construction without properly identifying historic properties affected by the project and without avoiding or mitigating adverse effects, thus potentially violating the National Historic Preservation Act (NHPA) and a negotiated agreement with the tribes. The court also concluded the claims were proper even though the groups had not objected to BLM's 2018 draft inventory report, interpreting NHPA as requiring DOI to consider whether the land in question was historic property regardless of formal comment when it had previous knowledge of the cultural significance of the properties. The case was remanded to the District of Arizona.

NRC Greenlights Nuclear Projects

At the end of May, the Nuclear Regulatory Commission (NRC) completed its environmental assessment of Holtec International's plan to recommission a retired nuclear power plant in Michigan, finding there would be "no significant impact" to the human environment. Given this update and other federal agency's continued loans to the project, it seems likely NRC will approve the project soon, planned to reopen in October 2025 for a 20-year operating license. Several local environmental organizations have challenged NRC's finding, seeking to prevent the restart of the 800-MW power plant. NRC further signaled its support for nuclear projects by approving a new small modular reactor plant design on May 29, allowing the design to be used in future reactor construction permits and licenses.

REGULATORY DEVELOPMENTS

D.C. Energy and Regulatory Litigator Nominated for FERC Chairman

President Trump nominated Laura Swett to serve as FERC Chair. Most recently, Swett worked at several Washington D.C. firms representing pipelines and electric power companies in litigation and before FERC. Before entering private practice, Swett served as an adviser to members of FERC. Swett will lead the five-member commission, which has two Democratic commissioners. Swett's nomination will replace the current Chair, Mark Christie, a few weeks after he publicly stated that FERC's compliance with executive orders to incorporate sunset provisions in regulations would likely lead to lawsuits where challengers would "win if we didn't follow the Administrative Procedure Act." Swett's nomination requires Senate confirmation.

DOE Rescinds Funding for Clean Energy and Carbon Capture Projects

At the end of May, the Department of Energy (DOE) cancelled grant awards to companies including PPL Corp., Exxon Mobil Corp., and Ørsted Star P2X LLC. The DOE Office of Clean Energy Demonstrations, which was created in 2021 to distribute $27 billion under the Infrastructure Investment and Jobs Act and Inflation Reduction Act, had previously granted $3.7 billion to 24 projects during the Biden Administration's final year. DOE cited concerns these projects were not economically viable, did not support affordable and reliable energy sources, and failed to "advance the energy needs of the American people."

DOE Declares Emergency, Prohibiting Pennsylvania Oil & Gas Power Plants from Retiring

On May 30, DOE ordered Constellation Energy and PJM Interconnection (PJM) to continue operating Constellation's Pennsylvania facilities until August 28. The agency cited PJM's previous concerns about meeting demand under extreme conditions, preventing Constellation from retiring the generators as planned on May 31. The emergency order could be extended as PJM analyzes long-term need for and continued viability of these aging facilities.

Maryland Utilities Must Begin Disclosing PJM Votes

A new Maryland law requires Maryland public electric utilities to annually report their public and nonpublic votes as stakeholders of PJM. Similar bills are being considered in Delaware, Pennsylvania, and Illinois. Maryland's law also requires utilities to have separate rate structures for large-load customers, prohibits utilities from collecting rates for lobbying, and is designed to add transparency for electric bills.

Virginia Requires Dominion Energy to Propose a Virtual Power Plant Pilot Program

A new Virginia law requires Dominion Energy Virginia to design a pilot program by November 2026, to draw upon any customer batteries to provide energy at peak times to establish a virtual power plant (VPP). The law also requires Dominion to evaluate the pilot, develop a permanent program, and incorporate a plan to draw upon electric school bus batteries. Although VPPs have gained bipartisan support in recent years as a method to avoid grid overload and have been voluntarily introduced by many utilities, Virginia is the first state to pass a state law to require an electric utility to create a VPP.

New York and California Announce New Clean Energy Programs for Low Income

Households

The New York Public Service Commission (NYPSC) and California Public Utilities Commission (CPUC) have announced new programs to fund renewable energy and energy efficiency initiatives in low-to-moderate income households. The NYPSC authorized a five-year program providing $1 billion per year for energy efficiency programs, focusing on weatherization to reduce energy costs for low-income households. Likewise, the CPUC approved $280 million to incentivize low-income customers to install batteries and solar panels as part of its efforts to create a VPP.