

Energy Law: Month in Review - September 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.

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LITIGATION AND DISPUTES

Third Circuit Rules Pennsylvania Commission's Transmission Siting Decision Preempted by Federal Law

Related People

- Brian Bell
- Zev Simpser
- Colin Wicker

Related Capabilities

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

In a September 5, 2025 [decision](#), a unanimous three judge panel of the United States Court of Appeals for the Third Circuit held that a Pennsylvania Public Utility Commission order denying Transource Pennsylvania's application to build transmission lines in Pennsylvania was invalid under the Supremacy Clause of the U.S. Constitution. The specific project is meant to relieve congestion along the Pennsylvania-Maryland border, and is projected to lower costs in Maryland, Virginia, West Virginia, and the District of Columbia. However, it is also forecasted to increase costs in Pennsylvania. The Pennsylvania Commission decided there is not a need for the project, and in doing so it rejected PJM's Federal Energy Regulatory Commission (FERC)-approved cost-benefit analysis. The Third Circuit concluded the Pennsylvania Commission's decision frustrated FERC's objectives. It found that regional planning was one tool FERC had developed to support competition and held that "[w]hen an RTO has selected a project for inclusion in a regional transmission plan as part of its federal mandate, a state regulator cannot, consistent with the Supremacy Clause, reject the project based on a lack of 'need.'" The district court had also found that the Pennsylvania order violated the dormant commerce clause, but the Third Circuit did not reach that issue.

D.C. Circuit Upholds FERC Decision on Solar-Plus-Battery Project in Post-Chevron PURPA Case

On September 9, 2025, in a 2-1 [decision](#), the United States Court of Appeals for the District of Columbia Circuit upheld FERC's certification of the Broadview solar power facility as a "small power production facility" under the Public Utility Regulatory Policies Act of 1978 (PURPA). The court had upheld FERC's decision in 2023, but the United States Supreme Court remanded the case back to the D.C. Circuit following the decision in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), overruling *Chevron U.S.A. v. Natural Res. Def. Council*, 467 U.S. 837 (1984). The Broadview facility will be capable of generating up to 160 MW and has a 50 MW battery, but the facility's inverters can only send 80 MW to the grid. The question before the court was whether Broadview will violate the 80 MW power production capacity ceiling for a "facility" set forth in 16 U.S.C. § 796(17)(A). Earlier, the court had deferred to FERC in resolving the issue, but on remand the court concluded for itself that the "power production capacity" of a "facility" is the amount of power it can send to the grid. The D.C. Circuit held this reading of the statute best accounts for the facility as a whole and not just the maximum capacity of the solar production array, which the court characterized as just one component of the facility.

Xcel Energy and Telecommunications Defendants Settle Marshall Fire Litigation

On September 24, 2025, one day before trial was scheduled to begin in Boulder County

District Court in Boulder, Colorado, Xcel Energy, Qwest Corporation, and Teleport Communications America announced an approximately \$640 million settlement in principle to resolve claims brought by individual plaintiffs, subrogation insurers, and public entities related to the 2021 Marshall Fire. In its statement, Xcel Energy said that approximately \$350 million of the settlement would be funded by its remaining insurance coverage and none from its customers. Xcel Energy did not admit any fault, wrongdoing, or negligence, consistent with its position throughout the litigation. Plaintiffs had sought billions in damages.

Pennsylvania Supreme Court Allows Utility to Keep Competitors Add-Ons off Utility Bills

On September 25, 2025, the Pennsylvania Supreme Court decided that FirstEnergy does not have to provide “on-bill billing” to third parties offering non-utility goods and services, such as tree trimming services and smart thermostats, even though it will include such amounts when customers purchase such goods and services from FirstEnergy itself. Under Pennsylvania law, FirstEnergy and other Electric Distribution Companies (EDCs) do have to provide on-bill billing when customers choose to purchase power generated by a different utility operating as an electric generation supplier (EGS), but the court concluded that the applicable provisions of Pennsylvania’s Competition Act do not apply to non-commodity goods and services.

REGULATORY DEVELOPMENTS

Trump Administration Cancels Awards to Clean Energy Projects in Blue States

In a press release issued on October 1, 2025, the U.S. Department of Energy (DOE) announced the termination of 321 financial awards supporting 223 projects. DOE stated that the projects did not adequately advance the nation’s energy needs, were not economically viable, and would not provide a positive return on the investment of taxpayer dollars. DOE did not provide a list of the projects in question in its press release, but reports indicate they include a Minnesota Power direct current upgrade project and Xcel Energy long-duration energy storage projects. The projects are clean energy projects and are located in California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Maryland, Massachusetts, Minnesota, New Hampshire, New Jersey, New Mexico, New York, Oregon, Vermont, and Washington, Democratic leaning states.

Texas Commission Approves Two Entergy Gas-Fueled Plants with \$2.4 Billion Hard Cap

On September 11, 2025, the Public Utility Commission of Texas approved a Certificate of

Convenience and Necessity for Entergy's proposed gas-fueled 754-MW Legend Power Station and 453-MW Lone Star Power Station. Legend is a combined cycle facility that would be carbon capture-enabled and have a hydrogen-capable turbine, and Lone Star is a combustion turbine facility with a hydrogen capable turbine. In remarks at hearing and a Commissioner Memorandum, Chairman Thomas Gleeson agreed Entergy needs to address projected capacity shortfalls but advocated for a hard cap on costs in light of concerns that the utility had not taken sufficient steps to ensure the projects will be cost effective. Notably, Entergy had not issued a request for proposals to determine what projects to pursue. The Commission set a \$1.6 billion hard cap for the Legend project and a \$799 million hard cap for the Lone Star project.

Nevada Commission Institutes Daily Demand Charge for Nevada Power and 15-Minute Interval Net Metering for Sierra Pacific Power

In a September 16, 2025 Order, the Public Utilities Commission of Nevada (PUCN) resolved the contested issues in rate cases brought by Nevada Power Company and Sierra Pacific Power Company, both of which do business as NV Energy. Importantly, the PUCN established a new daily demand charge for all Nevada Power residential and small business customers to be implemented beginning April 2026, which will be calculated based on the maximum amount a customer uses each day with the daily charges summed up monthly. The new charge is designed to address what the PUCN said was "under-recovery of costs" from customers with solar generation participating in a statutorily required net-metering program. PUCN also established 15-minute interval net metering, rather than monthly net metering, for new net metering customers in Sierra's service territory to address the same issue.

Framework for New Proactive Grid Planning Process Adopted in New York

On September 18, 2025, the New York Public Service Commission (NYPSC) adopted a Proactive Planning Framework designed to establish a statewide unified process to study and identify necessary system upgrades to support building electrification and transportation electrification. In contrast to New York's Coordinated Grid Planning Process, which is focused on higher-voltage infrastructure, the new process is to use bottom-up modeling to identify upgrades to distribution and local network systems for NYPSC consideration. The first step under the framework is for utilities to file plans outlining data needs and assumptions needed to develop granular load forecasts.

Washington Commission Adopts Rules for Combined Gas and Electric Integrated System Plans

The Washington Utilities and Transportation Commission issued rules on September 26,

2025 for combined gas and electric Integrated System Plans that Puget Sound Energy, the state's only large gas and electric utility, will have to begin filing in 2027. The rules include specific plan requirements, including a cost test to be used for emission-reduction measures. The combined planning process was mandated by the Washington Legislature in the Large Combination Utilities Decarbonization Act, which was enacted in 2023. A voter-approved initiative, Initiative 2066, would have required significant changes to the rules and the underlying statute in ways that would continue access to and use of natural gas, but it was found unconstitutional by a district court earlier this year. The Washington Supreme Court granted review of that decision on September 3, 2025.

FERC Issues Direct Final Rule to Sunset 53 Existing Regulations

On October 1, 2025, the FERC approved a direct final rule to incorporate a conditional phaseout date into 53 existing regulations. FERC stated that the rules chosen for sunset are "outdated, seldomly used, or duplicative regulations." Some regulations are outdated because their governing regulations or statutes have been amended or repealed. Other regulations concern filing protocols that are not used by FERC anymore. The rule will be effective 45 days after being published in the Federal Register and the conditional sunset dates incorporated into the existing rules are one year after the effective date. FERC explained that the one-year period provides an opportunity to comment on the costs and benefits of the regulations in question prior to the sunset date. FERC also stated that if it receives significant adverse comments on any part of the direct final rule by 30 days after the date of publication in the Federal Register, it will withdraw such part of the rule and address it in a separate rulemaking. FERC's action was taken in response to Executive Order 14270, "Zero-Based Regulatory Budgeting to Unleash American Energy."

LEGISLATION

FERC Issues Direct Final Rule to Sunset 53 Existing Regulations

California Governor Gavin Newsom signed multiple energy bills into law on September 19, 2025. The legislation includes [AB 825](#), which provides for an independent body to oversee the regional Western energy market, and [SB 254](#), which creates the California Transmission Accelerator Revolving Fund Program to build new transmission lines and adds \$18 billion to California's wildfire fund. Also, [AB 1207](#) re-authorized the state's cap-and-trade program through 2045 and renamed it a "cap-and-invest" program.

