

# DC Circuit Grants Emergency Stay for Proposed Powerplant

## News

February 11, 2022

A firm team represents NTE Connecticut, LLC, which for several years has been developing a large powerplant that will connect to the New England electric grid, bringing reliable, cleaner power to the region that will help facilitate the integration of offshore wind and other renewable energy. But because of lengthy litigation brought in an ultimately unsuccessful attempt to vacate its environmental permits, and other factors like navigating through the pandemic, NTE has been delayed in starting construction.

Last November, the regional grid operator, ISO New England Inc., submitted a request to the Federal Energy Regulatory Commission (FERC) to terminate a key source of income for NTE – its capacity supply obligation contract. Under this contract, NTE (and other generators) promise to provide electricity to the grid in future years at a rate determined in annual auctions. ISO New England claimed that termination was warranted because, in its view, NTE would not meet the June 1, 2024 deadline to bring the plant online.

Despite NTE's extensive evidence showing that the plant was on schedule when ISO New England filed the termination, in early January, FERC approved the termination, stating only that it was "persuaded by the evidence provided by" the grid operator. The Commission claimed that "because much of the pertinent information has been filed on a non-public basis, this public order cannot go into detail," but that its "review of these non-public materials, however, satisfie[d]" it of the outcome.

One immediate effect of the order was to exclude NTE from ISO New England's next capacity auction, which at the time was only one month away. Exclusion from the auction likely would have been fatal to the project. Even worse, because FERC does not re-run auctions, nor is there a clear path to damages, NTE would have been without a remedy.

The team immediately sought an emergency stay before FERC, to enable NTE to remain in the upcoming auction pending review, and requested a rehearing. When the Commission failed to acknowledge the team's filing, they petitioned the DC Circuit for an emergency stay under the All Writs Act.

On February 4, the DC Circuit granted the petition, finding that NTE “in this case has satisfied the [...] stringent requirements” for a stay. As a result of the court’s order, ISO New England allowed NTE to participate in the auction on the following Monday morning.

The team was led by David W. DeBruin, Sudeen G. Kelly, with assistance from Associates Ashwini Bharatkumar, Zachary B. Cohen, and Kevin J. Kennedy.

## **Related Attorneys**

### **Zach Cohen**

Partner

[zcohen@jenner.com](mailto:zcohen@jenner.com)

+1 202 639 6058

### **David W. DeBruin**

Partner

[ddebruin@jenner.com](mailto:ddebruin@jenner.com)

+1 202 639 6015



**Suede G. Kelly**

Partner

skelly@jenner.com

+1 202 639 6055

**Related Capabilities**

Energy

**Related Locations**

Washington, DC

© 2026 Jenner & Block LLP. Attorney Advertising. Jenner & Block LLP is an Illinois Limited Liability Partnership including professional corporations. This publication, presentation, or event is not intended to provide legal advice but to provide information on legal matters and/or firm news of interest to our clients and colleagues. Readers or attendees should seek specific legal advice before taking any action with respect to matters mentioned in this publication or at this event. The attorney responsible for this communication is Brent E. Kidwell, Jenner & Block LLP, 353 N. Clark Street, Chicago, IL 60654-3456. Prior results do not guarantee a similar outcome. Jenner & Block London LLP, an affiliate of Jenner & Block LLP, is a limited liability partnership established under the laws of the State of Delaware, USA and is authorised and regulated by the Solicitors Regulation Authority with SRA number 615729. Information regarding the data we collect and the rights you have over your data can be found in our Privacy Notice. For further inquiries, please contact [dataprotection@jenner.com](mailto:dataprotection@jenner.com).

**Stay Informed**

