

Energy Litigation and Regulated Proceedings

Kaplan Kirsch & Rockwell represents a diverse range of clients in our Energy Litigation and Regulated Proceedings practice, including independent power producers, affiliates of regulated electric utility companies, trade associations, local government interests, and environmental nonprofit groups. We appear in litigation, administrative proceedings, and arbitration before state and federal courts, state public utility commissions (PUCs), and arbitral tribunals. We often counsel clients on state proceedings involving electric resource planning, resource and transmission project approvals, electric vehicle integration, demand-side management, rates, proposed utility tariff changes, and Certificates of Public Convenience and Necessity. Our Energy Litigation and Regulated Proceedings practice is closely connected to our Clean Transportation and Electrification practice.

Representative Experience

Public Utilities Commissions and Other Regulatory Proceedings

- Representing Natural Resources Defense Council in Colorado PUC proceedings involving transportation electrification plans and electric resource planning.
- Representing solar project developers and owners in PUC proceedings regarding utility competitive solicitations and power purchase agreements.
- Representing the Environmental Defense Fund and Healthy Air and Water Colorado in a challenge to revisions to Colorado Air Quality Control Commission Regulation Number 7, regarding emission controls for pollution from the oil and gas industry, brought by the Board of County Commissioners of Weld County.
- Representing coalition of wildlife and hunting/angling groups in securing wildlife protections before the Colorado Oil and Gas Conservation Commission (COGCC), including protection of high priority habitat, implementation of best practices, and imposition of compensatory mitigation where necessary to address unavoidable impacts.
- Represented environmental non-profits in Colorado PUC proceedings to establish rules and policies regarding beneficial electrification.
- Represented Southwest Generation and Pueblo's Energy Future in Colorado PUC proceeding approving the Colorado Energy Plan, under which Xcel Energy will retire two coal-fired power plants several years early and replace the generation capacity with renewable energy, storage, and efficient natural gas facilities.
- Secured groundbreaking settlement of multiple Colorado PUC dockets addressing solar policy, acquisition, and rate issues on behalf of the Solar Energy Industries Association.
- Represented NAIOP—a commercial real estate trade association—and other parties in a matter before the Colorado PUC in which the PUC rejected Xcel Energy's environmental tariff proposal to shift the risks and liabilities associated with potentially contaminated properties onto developers and property owners.
- Advocated for wind developer before the Colorado PUC in a matter filed by a utility proposing to amend its resource plan to reject certain winning bids.
- Represented renewable trade associations and energy efficiency advocacy organizations in demand-side management and resource matters before the Colorado PUC to increase the acquisition of wind and solar energy, as well as more energy efficiency programs.
- Served as lead attorney representing nonprofit organizations before Colorado Air Quality Control Commission (AQCC) and PUC, securing a groundbreaking plan that resulted in significant pollution



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reduction from coal-fired power plants and served as a model for national efforts to reduce climate pollution from the power sector.

- Represented several independent power producer and storage developer interests in integrated resource planning proceedings before California PUC.
- Represented citizen in securing flowline-safety regulations before the COGCC which will require oil and gas companies to identify the location of existing below-ground flowlines, provide for public mapping of flowline locations statewide, and ensure that flowlines no longer needed will be removed.

Court Cases and Arbitrations

- Representing Environmental Defense Fund and Healthy Air and Water Colorado in challenges to Colorado AQCC regulations establishing requirements for the control of emissions from the oil and gas sector in Colorado. *Bd. of Cty. Comm'rs of the County of Garfield v. Air Quality Control Comm'n*, No. 2020CV30997 (Dist. Ct., City & Cty. of Denver); *Bd. of Cty. Comm'rs of Weld Cty. v. Ryan*, No. 2020CV31022 (Dist. Ct., City & Cty. of Denver).
- Successfully defended the constitutionality of Colorado's Renewable Energy Standard on behalf of the Interwest Energy Alliance, a wind energy trade group. *Energy & Env't Legal Inst. v. Epel*, 43 F. Supp. 3d 1171 (D. Colo. 2014), *aff'd* 793 F.3d 1169 (10th Cir. 2015).
- Successfully represented Clark County, Nevada, in the judicial review of a Federal Aviation Administration (FAA) obstruction analysis of a proposed wind farm proximate to McCarran International Airport in Las Vegas, Nevada. *Clark County v. FAA*, 522 F.3d 437 (D.C. Cir. 2008).
- Successfully represented nonprofit organizations in securing dismissal of industry challenge to Colorado AQCC regulations implementing measures that would require significant emissions reductions from coal-fired power plants. *Coal Mining Ass'n v. Urbina*, No. 11CV2044 (Dist. Ct., City & Cty. of Denver), *aff'd* 318 P.3d 562 (Colo. App. 2013).
- Secured favorable judgment for independent power producer in complex arbitration against a utility regarding a power purchase agreement dispute for a biomass facility.