

## Solar, Wind Credits Still Clouded After Safe Harbor Revived

By **Kat Lucero**

*Law360 (June 15, 2026, 1:49 PM EDT)* -- Renewable energy advocates scored a victory when a D.C. federal judge reinstated a safe harbor construction rule for solar and wind projects to access green energy tax credits, but uncertainty persists over the real-world impact while the federal government weighs its next steps.

On June 6, U.S. District Judge Colleen Kollar-Kotelly vacated 2025 guidance that had eliminated the 5% safe harbor rule as one of two methods for solar and wind developers to establish when construction began for projects seeking to claim the clean electricity production and investment tax credits.

The judge ruled that the guidance failed to adequately justify the Internal Revenue Service's decision to eliminate the long-standing safe harbor rule for solar and wind projects in the guidance. It was issued in late August as part of President Donald Trump's push to reduce federal support for those forms of renewable energy.

Since 2013, developers have relied on the safe harbor, under which renewable energy projects can establish that construction has begun by paying or incurring at least 5% of total project costs, to determine the construction start date to help calculate the credits.

However, the D.C. federal court's latest decision may be too late for many developers to adjust their plans with the incentives for wind and solar energy set to expire July 4, practitioners told Law360.

While the decision is "a big win" for the renewable energy industry, businesses "should be cautiously optimistic," said Joe Boddicker of Alston & Bird LLP.

"Ultimately, they should probably stay with their existing strategies," he said.

Whether that path would be commercially viable also remains uncertain.



Although a federal judge's June 6 ruling reinstated a safe harbor construction rule for solar and wind projects to access green energy tax credits, practitioners pointed out to Law360 that the government has not indicated whether it will appeal the decision or pursue other enforcement. (iStock.com/pkawasaki)

The government also has not indicated whether it will appeal the decision or pursue other enforcement, leaving open the possibility that the legal landscape could shift again in the coming months, according to practitioners.

Even if well-heeled developers can put together a deal by July 4, the legal uncertainty surrounding the ruling may still give them pause. An appellate court could reverse the D.C. federal court decision months later, potentially upending investments made in reliance on the opinion.

"There would be a significant question whether such a position would be accepted in the market by financing parties if that is their sole method of beginning construction given the lingering impact" of the notice, said Casey August of Morgan Lewis & Bockius LLP.

That uncertainty creates difficult decisions for developers considering whether to move forward with equipment purchases, according to Jorge Medina of Vinson & Elkins LLP.

"Do I pay a bunch of money for equipment today and two months later the decision gets overturned? What is the impact of that?" he asked.

The decision is "too late to make a meaningful difference," Medina said.

At issue is Notice 2025-42, which is subregulatory guidance that aims to carry out Trump's broader policy to scale back federal programs for large-scale solar and wind energy infrastructure.

The **notice**, released in late August, stripped a long-standing safe harbor allowing developers that had not yet broken ground on renewable energy projects to establish eligibility by showing they had paid or incurred at least 5% of the facility's construction costs.

Since 2013, the IRS has recognized the safe harbor as one of two methods for satisfying the statutory beginning-of-construction requirement for clean energy tax credits. The other is the physical work test, which requires evidence that significant physical work has begun on the project.

If a developer has a tight deadline, it would opt to meet the safe harbor to demonstrate that it began construction, according to Hasan Nazar, head of policy at Crux Climate Inc.

That method is "just a matter of getting money out of the door," such as buying solar panels or structural steel "and meeting the 5% of the total project cost," he said.

However, the 2025 budget law imposed an accelerated expiration date of July 4, 2026, for solar and wind energy projects to access the clean electricity production and investment tax credits under Internal Revenue Code sections 45Y and 48E, which were just enhanced under the 2022 climate law. Other energy technologies eligible for those credits, such as nuclear and hydropower plants, had later deadlines.

Shortly after the budget law's enactment, the White House ordered the IRS to issue guidance tightening the 5% safe harbor requirement for wind and solar energy development. The goal was to prevent developers from using creative building cost methods or stockpiling materials to establish a construction start date.

The order resulted in Notice 2025-4 and triggered a suit against the IRS a few months later from several

advocacy groups and municipalities, including the Oregon Environmental Council and the city of San Francisco. They argued the notice discriminated against solar and wind energy and was arbitrary and capricious, violating the Administrative Procedure Act, according to their Dec. 18 complaint.

The groups asserted that developers and investors, as well as local and state governments, have widely relied on the 5% safe harbor to demonstrate credit eligibility, obtain financing and plan project development pipelines and timelines. Without the safe harbor rule, some solar and wind projects will not go forward, according to their complaint.

Judge Kollar-Kotelly largely sided with the plaintiffs, rebuking the notice's one-paragraph explanation on a significant rule change, such as removal of the long-standing safe harbor test developers for years have relied on.

A major rulemaking requires the agency to provide a thorough, reasoned explanation of its decision — something that cannot be satisfied with a one-paragraph discussion, the judge said.

Although the decision appears to have stripped the notice of its immediate force, some solar and wind developers remain in limbo, according to practitioners.

It is possible, they said, that the IRS will either request the D.C. federal court to enforce Notice 2025-42 while it appeals the opinion or replace the vacated notice with a new one addressing the prior guidance's deficiencies.

The uncertainty also stems from the possibility that the government will appeal, as Judge Kollar-Kotelly noted in her opinion: "It is likely that market participants will need to await the outcome of an appeal before they will have certainty about the legal effect of the notice."

Even if the court decision remains in place by July 4, developers who are able to incur the 5% costs of the project before the credits expire may still face challenges in finalizing a deal, according to Nazar of Crux.

"As long as the uncertainty remains, it's quite likely that you're not going to see a lot more incremental movement," he said.

--Additional reporting by Ganesh Setty. Editing by Neil Cohen and Lief Nielsen.