



Vinson & Elkins

Power Play

# Energy Disputes: Navigating Key Trends and Challenges



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# Introduction

Disputes dominated the energy landscape in 2024, with the energy industry facing complex and sometimes contradictory challenges. As the world continues to grapple with the energy transition, energy security, global policy shifts, and volatile market dynamics, energy disputes will continue to emerge in 2025.

Some of the challenges, such as climate change, have long been on the agenda. Now, we are seeing them manifest in various ways, such as through a rise in climate change litigation and disputes involving the carbon credit market. Other challenges are perennial hazards, like State interference and regulatory shifts.

Yet the energy industry now faces a range of immediate challenges that few would have anticipated a decade ago. These include the oil and gas supply crunch and the impact of international sanctions following the war in Ukraine, as well as the disruption to critical minerals supply chains and the accompanying geopolitical tensions — all set against intense cost-of-living pressures and the increased costs of financing.

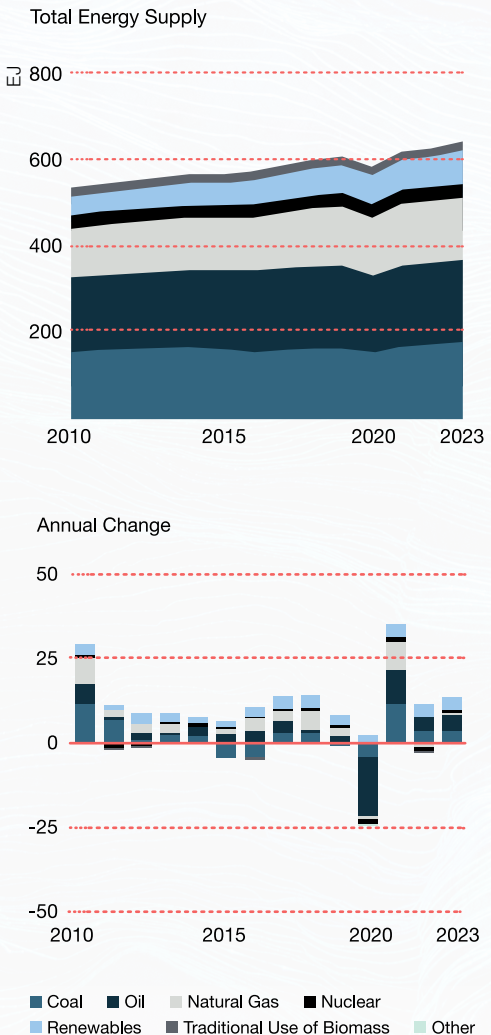
One of the largest and most diverse areas for disputes remains the energy transition, as the energy sector grapples with the realities of decarbonisation. The second Trump administration will likely create significant disruption on a global scale, as evidenced by President Trump's Executive Order withdrawing the United States from the Paris Agreement.

We expect increased State involvement in the energy sector worldwide, be it through the update of energy policies in the UK and elsewhere or through the increased nationalisation measures in resource-rich States across Africa and Asia. Against this backdrop, we expect supply-chain disruptions to continue for some time.

Finally, the push towards new technologies, both in the development of renewable energy and in the storage of energy, will lead to more disputes both at the commercial level and between investors and States.

This report takes stock of the developments in energy disputes in 2024 and examines the trends likely to continue or arise in 2025. We focus on six key trends and how they could affect your business.

**Global Total Energy Supply 2010-2023**



Source: International Energy Agency 2024



## Climate Change Litigation

# Driving Action Against States

Climate change litigation has continued to rise in recent years, with several landmark decisions issued in 2024 at both the national and international levels.

- The International Tribunal for the Law of the Sea issued an Advisory Opinion confirming that parties to UNCLOS — the United Nations Convention on the Law of the Sea — must take measures to combat marine pollution caused by climate change.<sup>1</sup>
- The UK Supreme Court in *Finch* ruled that fossil-fuel projects must be assessed for climate impacts.<sup>2</sup>
- By contrast, Shell won its appeal before the Dutch courts, which set aside an earlier finding that required the company to reduce its emissions by 45 percent relative to 2019 levels. While an appeals court agreed that Shell had an obligation to reduce CO<sub>2</sub> emissions, the court did not have the power to enforce specific emissions reductions (suggesting that policy changes may be required).<sup>3</sup>

2025 will likely see further climate change actions, likely with an increased focus on States' obligations.

Two further Advisory Opinions are expected this year:

- The International Court of Justice's Advisory Opinion is expected to clarify the obligations of States in relation to climate change and the legal consequences where those obligations are not met.<sup>4</sup>
- The Inter-American Court of Human Rights' Advisory Opinion is also expected to clarify whether States have obligations to respond to the climate emergency within the framework of regional human rights law.

Businesses also continue to face challenges directly, as greenwashing lawsuits, in particular, are set to continue. Aside from this direct litigation risk, climate change litigation and the increased focus on States' obligations regarding climate change will likely continue to shape the energy industry by amending environmental standards, permitting requirements, and many other aspects of energy projects.

Businesses should remain diligent in reviewing climate change and environmental policies and stay aware of all related legislative and regulatory changes.



# Pricing and Delivery Disputes to Rise

The liquefied natural gas (LNG) market is expected to see a rise in disputes in 2025.

Over the past decade, the market has moved away from long-term contracts, with a growing reliance on US exports and the development of spot markets and short-term agreements. As the global energy landscape evolves in response to geopolitical instability, the shift of supply to Asia, supply chain disruptions, and the rising demand for cleaner energy (in which LNG plays an important role), LNG disputes are likely to increase in the coming year.

## Pricing Disputes

The transition from a historic oil-linked pricing structure to more volatile spot market pricing, which is subject to more immediate supply-demand imbalances, is a key driver of disputes:

- Buyers may demand lower prices due to market oversupply, while sellers may seek to uphold contractual prices set years before when market conditions were different.
- Alternatively, sellers may obtain higher spot prices, potentially encouraging them to fail to deliver where profits exceed the liability cap in the long-term contracts. This was a frequent occurrence with the high prices in 2022.

## Delivery Disputes

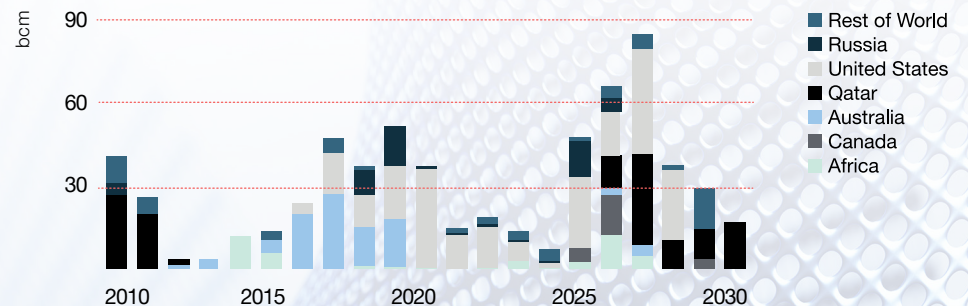
Delivery obligations, particularly regarding Failure to Deliver/Failure to Take obligations, will remain a source of disputes. Disruptions in global supply chains (caused by factors such as extreme weather and logistical challenges) and geopolitical events increase the risk of missed delivery deadlines and insufficient LNG supply.

## Environmental Regulations

Furthermore, environmental regulations and the push for greener energy are also likely to impact the LNG market. For example, European buyers need to comply with the EU's green regulations, such as the Corporate Sustainability Due Diligence Directive, requiring them to check their supply chains for forced labour or environmental impacts. Indeed, Qatar recently warned that gas exports would cease if the EU imposes penalties under these green regulations.<sup>5</sup>

US LNG exports will also face obstacles, due to the market's fragmentation and the multiple counterparties requiring a due diligence assessment. As governments increasingly impose stricter carbon-emission standards, LNG suppliers and buyers will need to consider what impact these regulations will have on their long-standing arrangements.

## LNG Export Capacity



Source: International Energy Agency 2024



# Challenges and Complexities of an Industry Under Geopolitical Spotlight

Critical minerals are at the centre of a geopolitical competition for energy security, decarbonisation, the growing power demand for AI, and global supply chain resilience. 2025 will see the ongoing transformation of the critical minerals sector through regulatory overhauls, strategic public funding initiatives, and shifting global priorities. This intense pressure on the sector is expected to give rise to additional challenges and disputes as States and companies navigate the complexities of securing these essential resources.

## Government Policies

2024 saw increased government involvement in regulating and subsidising critical minerals — for example, with the establishment of the Minerals Security Partnership Finance Network and the EU Critical Raw Materials Act. More government-sponsored initiatives are expected, which we anticipate will impact the sector in 2025. The UK recently announced its intention to publish a new UK critical minerals strategy in the spring of 2025.

In the United States, the Trump administration might seek to unwind some Biden administration policies, such as the Inflation Reduction Act, but there remains strong agreement on the need to build critical minerals security. Government involvement will encourage government and private finance institutions to invest directly in critical-minerals projects and entities in the form of long-term commitments and cooperation.

However, this drive for investment may result in disputes between the parties involved, given the volatility of the various minerals and concerns over feedstock supply. Furthermore, governments seeking to simplify permitting procedures for critical minerals projects may face increased challenges from an environmental and social perspective.

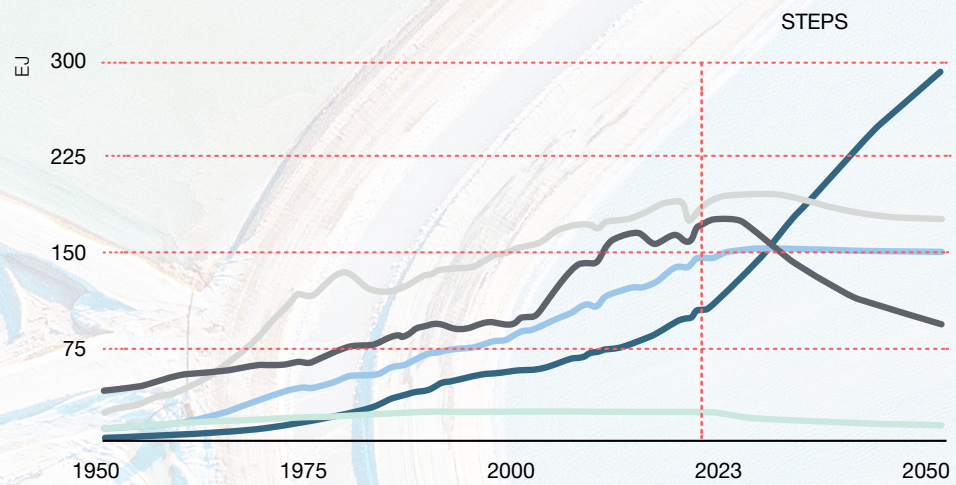
## Increased State Control in Resource-Rich Countries

While the geographic concentration of the mining and processing of critical minerals will continue to result in significant foreign investment, countries with abundant critical minerals (often in Asia and Africa) are increasingly asserting State control over the industry, with some States introducing protectionist measures, including export bans, nationalisation efforts, or restrictions on foreign ownership.

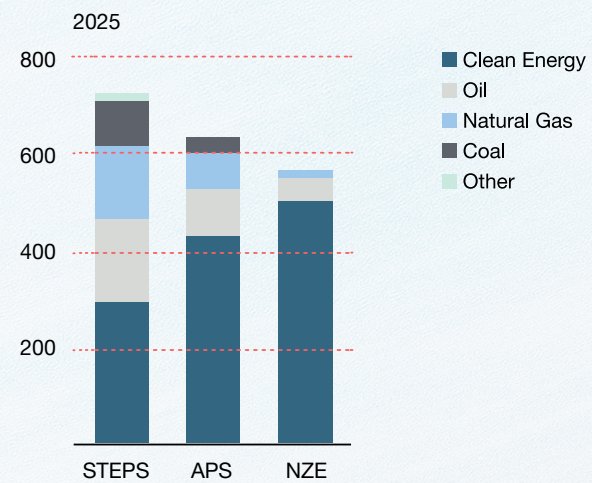
These regulatory changes will impact ongoing and future projects, and foreign investors may encounter difficulties navigating the shifting regulatory landscape, leading to increased disputes with Host States.



## Global Energy Mix



Source: International Energy Agency 2024





# Increasing Scrutiny and Complex Markets

2024 brought renewed hope to the carbon credit sector, with States reaching an agreement on international carbon market standards at COP29. Despite this welcome development, the industry remains at an early stage, and disputes relating to carbon credits will likely continue to rise in 2025, as a result of increasing scrutiny of the legitimacy and quality of carbon credits and the continuing complexity of international carbon markets.

## The Proper Value of a Carbon Credit

Uncertainty regarding the value of a carbon credit persists for several reasons: The standards bodies issuing credits are still largely unregulated, there is no consensus in carbon accounting given the plurality of voluntary programs, and there are no standardised rules or data collection procedures across entities and sectors. The lack of consensus on the calculation and accounting of carbon credits will lead to more disputes.

## Misrepresentation in Credit Markets

With the proliferation of voluntary credit markets (which remain regulated by governments and international bodies), participants may misrepresent the effectiveness or authenticity of credits or even their compliance with certain regimes. Parties should ensure that carbon credits come from verified and established certification bodies to mitigate the risk of purchasing worthless credits; or, at a minimum, to help improve prospects of seeking recourse if the credits purchased do prove to be worthless.

## Investor-State Claims

Regulatory intervention by States and international bodies — for example, through the removal of a large number of credits from the market and the reduction of new credits — has contributed to the recent surge in carbon prices. With more States introducing cap-and-trade systems, green certificates, or other types of carbon markets — and with additional regulations likely to be introduced — we expect to see a rise in investor-State claims when States' interventionist measures impact their investments.

Furthermore, many of the emissions trading systems and agreements contain arbitration clauses. These include, for example, the International Emission Trading Association template agreement and the International Bank for Reconstruction and Development (IBRD) General Conditions Applicable to Emission Reduction Payment Agreements. The use of arbitration clauses in template agreements governing carbon market trades will likely ensure that arbitration plays a significant role in carbon market disputes.





## Power Purchase Agreements

# Tariff Disputes to Continue

Tariff disputes are expected to remain a prominent issue, particularly in the context of power purchase agreements (PPAs). These agreements enable energy generators — often from renewable projects — to sell electricity to offtakers, securing long-term revenue for the duration of the project's financing term.

However, price volatility, rising capital expenditure (CAPEX), and increasing financing costs are piling pressure on PPAs, potentially leading to disputes over tariff renegotiations or the abandonment or termination of unprofitable projects.

## Electricity Price Volatility

Energy markets have recently seen significant price fluctuations, where tariffs agreed upon in PPAs may become either too high or too low due to market forces. This misalignment between agreed tariffs and market conditions can result in disputes between the parties involved.

## Increased CAPEX and Financing Costs

At the same time, the rise in interest rates makes financing energy projects more expensive, affecting the capital required for new and existing projects. The rise in financing costs can reduce the profitability of projects, especially when original tariffs were agreed based on lower financing rates.

## Grid Connection Issues

Compounding these issues are the difficulties with grid connections that many energy producers face, including in mature grids such as the UK's, especially in remote or rural areas. As demand for electricity increases and grid infrastructure struggles to keep pace, energy producers may find themselves facing higher connection costs, delays, or technical challenges. These additional costs can further impact the financial sustainability of energy projects.

## Legal and Regulatory Change

Evolving legal and regulatory frameworks introduce additional risks, such as shifts in the market price, in operating costs, or in the level of government subsidies for renewable energy. Such changes can undermine the financial assumptions underlying existing PPAs, making it difficult for energy producers to meet agreed terms or for offtakers to manage their obligations effectively. Such changes may lead to PPA disputes between the parties, or investment disputes with the Host State, highlighting the growing complexity of tariff negotiations and energy project financing.



## Ongoing Impacts

Global sanctions against Russia continue to disrupt global energy projects and international arbitration, and we expect these effects to continue through 2025. Sanctions have led to a high number of disputes relating to contractual performance, particularly project suspension and termination, and the disruption of supply chains worldwide. Russia's counter-sanctions in response to Western sanctions have had further impacts, fuelling complexity in the legal landscape.

### Competing Anti-Suit Injunctions

One of the more complex consequences of sanctions and counter-sanctions is the increasing prevalence of competing anti-suit injunctions. The Russian Lugovoy Law has permitted Russian entities to have their cases heard in Russian courts, disregarding any arbitration agreement. Meanwhile, anti-suit injunctions have been granted outside of Russia, upholding those same arbitration or exclusive jurisdiction agreements.<sup>6</sup>

These conflicting rulings demonstrate the rising tension between jurisdictions, affecting energy projects operating across borders in the current geopolitical climate. We expect these rulings to continue into 2025, particularly impacting companies with assets in Russia.

### Temporary Management Measures

Additionally, States have implemented temporary management measures, which affect both Russian and European subsidiaries, including those of large energy companies. In Russia, for example, control of foreign-owned power assets was temporarily transferred to the Federal Agency for State Property Management. These assets include Fortum's thermal power plants in the Ural Mountains and West Siberia, as well as Uniper's power plants in central Russia.

Parallel measures were enacted in Europe, including the transfer of Rosneft and Gazprom assets in Germany into trusteeship by a federal energy regulator, as well as the external management and pending subsequent sale of a Novotek subsidiary in Poland. Such measures could potentially be seen as amounting to expropriation, and may lead to future legal challenges by investors seeking compensation for any losses suffered.

More recently, it has been reported that forthcoming Russian legislation may authorise the 'confiscation' of certain foreign assets, as opposed to the current position that has permitted the 'freezing' or 'temporary control' of those assets.

The ongoing disruption and growing legal uncertainties present a challenging landscape for energy companies and investors alike.



# Endnotes

- <sup>1</sup> [https://www.itlos.org/fileadmin/itlos/documents/cases/31/Advisory\\_Opinion/C31\\_Adv\\_Op\\_21.05.2024\\_orig.pdf](https://www.itlos.org/fileadmin/itlos/documents/cases/31/Advisory_Opinion/C31_Adv_Op_21.05.2024_orig.pdf)
- <sup>2</sup> *R (on the application of Finch on behalf of the Weald Action Group) v Surrey County Council and others* [2024] UKSC 20
- <sup>3</sup> *Milleudéfense et al. v Royal Dutch Shell*, ECLI:NL:GHDHA:2024:2100
- <sup>4</sup> Further information is available here: <https://www.velaw.com/insights/what-are-states-legal-obligations-in-relation-to-climate-change/>
- <sup>5</sup> More information: <https://www.politico.eu/article/qatar-warned-to-halt-eu-gas-supplies-if-fined-under-due-diligence-law/>
- <sup>6</sup> For example, in *Linde GMBH v RusChemAlliance*. In the English courts, see also *Unicredit Bank GmbH v RusChemAlliance LLC* [2024] EWCA Civ 64, *Airbus Canada Limited Partnership v Joint Stock Company Ilyushin Finance Co (No. 2)* [2024] EWHC 790 (Comm), *Barclays Bank PLC v PJSC Sovcombank & Anor* [2024] EWHC 1338 (Comm), *Renaissance Securities (Cyprus) Ltd v ILLC Chlodwig Enterprises* [2024] 4 WLUK 486

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