

Energy Law: Month in Review - August 2026

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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.

REGULATORY DEVELOPMENTS

Virginia Commission Requires Dominion to Directly Assign Some Transmission Costs to Data Centers

The Virginia State Corporation Commission (SCC) issued an order on July 31, 2026, in a Dominion Energy transmission cost rider proceeding establishing a new docket to develop a revised Dominion line extension policy requiring direct payment of certain transmission costs, through mandatory contribution in aid of construction payments. The new policy will apply to "direct connect" facilities that are needed to serve new or expanding large-load customers. Allocation of transmission costs that are not "direct connect" may also be addressed in the new docket. In its order, the SCC also approved a change to the class allocation method used for the rider that shifted more costs to large-load customers based on an adjustment to reflect a new minimum demand charge based on transmission of 85% of contract load (for those customers whose actual usage does not exceed that threshold).

DOE Not Moving Forward with Designating Three Previously Selected National Interest Electric Transmission Corridors

U.S. Secretary of Energy Chris Wright announced on August 12, 2026, that the U.S. Department of Energy (DOE) will not move forward with designating the Lake Erie-Canada Corridor, the Southwestern Grid Connector Corridor, and the Tribal Energy Access Corridor as National Interest Electric Transmission Corridors. The three had been selected by the Biden administration in late 2024. In its announcement, DOE characterized the three corridors as having been chosen by the Biden administration to advance "their Green New Scam agenda." DOE also stated that the designation

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framework had proved ineffective and pointed to other measures taken under the current administration to build new transmission infrastructure.

NY Begins Process to Establish Single, Statewide Platform for Direct Load Control

On August 13, 2026, the New York Public Service Commission issued an order establishing a proceeding to implement the Excelsior Power Program. The Commission explained that it envisions the Excelsior Power Program to be a “centralized statewide platform for enrolling all applicable devices within residential Direct Load Control (DLC) programs for both electric and gas systems.” By its order, the Commission directed the major gas and electric utilities to jointly develop and file a proposed implementation plan for the new program. The Commission’s order stems from requirements set by the New York State Legislature in its 2026-2027 enacted budget, which allocated \$33 million for the Excelsior Power Program. Among other requirements, the Legislature directed that participation in the new program be voluntary and that customers be able to override smart thermostats during demand control events without penalties other than discounting or derating bill credits.

FERC Approves Cost Allocation Framework for MISO Transmission Projects Built in PJM

On August 12, 2026, the Federal Energy Regulatory Commission approved a cost allocation framework proposed by the Midcontinent Independent System Operator Inc. (MISO) for transmission projects located in PJM Interconnection (PJM) that are designed to benefit MISO’s Midwest Subregion. The projects in question are part of the Tranche 2.1 portfolio of Multi-Value Projects approved by the MISO Board in December 2024 as part of the MISO long-range transmission planning process. Challengers argued MISO should have used its Competitive Developer Selection Process for the projects, but FERC concluded that MISO lacks authority to apply that process outside of its region with respect to projects under the functional control of another transmission provider.

Pennsylvania to Have Preferential Permitting for Data Centers that Bring their Own Power

In an Executive Order issued on August 18, 2026, Pennsylvania Governor Josh Shapiro ordered his state’s Department of Environmental Protection (DEP) to establish a separate (and faster) permitting review process for data center projects with peak demand over 25 MW that commit to the Governor’s Responsible Infrastructure Development (GRID) requirements. Under the GRID requirements, developers must secure incremental energy and capacity physically deliverable in the PJM deliverability area where the data center is located, must commit to using an increasing percentage of energy from dispatchable, clean energy resources located in Pennsylvania, and must provide agreements and/or tariffs showing they will pay all of the utility costs resulting from their projects, among other requirements. In the Executive Order, the Governor also directed the State to remove any existing data center projects from the previously established PA Permit Fast Track Program and barred state agencies from entering into

confidentiality agreements with data center developers. The Executive Order would also require data centers to obtain local or municipal approvals prior to state permitting action.

FERC Approves SPP Tariff Revisions to Allow Economic Topology Reconfigurations

On August 19, 2026, the Federal Energy Regulatory Commission (FERC) approved tariff revisions submitted by Southwest Power Pool (SPP) to implement a process allowing for economic topology reconfigurations. SPP explained that grid operators traditionally address congestion by re-dispatching power plants; however, topology reconfiguration can be used to change power flows to handle congestion less expensively. Under the new plan, market participants can submit proposed reconfigurations and the grid operator itself can offer reconfigurations. SPP pointed out that MISO implemented a similar process in 2023, and that it had achieved congestion savings of \$113 million in 2025 through that process. Commissioners David Rosner and Judy Chang issued concurrences in which they encouraged other grid operators to adopt similar approaches.

LITIGATION

Ninth Circuit Upholds Dismissal of PacifiCorp Challenge to Washington State Carbon Act

The United States Court of Appeals for the Ninth Circuit issued a published opinion on August 7, 2026, upholding a decision by the United States District Court for the Western District of Washington dismissing PacifiCorp's challenge under the United States Constitution's Dormant Commerce Clause to Washington State's Climate Commitment Act (CCA). PacifiCorp argued that the CCA is unconstitutional because it requires carbon emitting entities to obtain and retire carbon allowances but provides no-cost allowances for emitting generation that serves Washington customers while not doing so for emitting generation that serves customers in other jurisdictions. However, both the district court and the Ninth Circuit rejected PacifiCorp's challenge because generation used to supply electricity to Washington customers is already subject to the stringent requirements of Washington's Clean Energy Transformation Act (CETA). The Ninth Circuit concluded that emissions from generation used to serve Washington customers and emissions from generation to serve customers in other states are dissimilar because of CETA.

Pennsylvania Court Finds Solar PV Projects Eligible for Solar Credits Despite Not Being Connected to the Grid

The Commonwealth of Court of Pennsylvania issued a decision on August 19, 2026, holding that solar photovoltaic (PV) projects in Pennsylvania that directly deliver energy to a retail customer do not have to connect with the electrical grid to qualify for "solar renewable energy credits" under Pennsylvania's Alternative Energy Portfolio Standards (AEPS) Act. The decision, which arose out of Williams Companies, Inc.'s plans to construct two 11 MW behind-the-meter solar facilities to power natural gas compressor stations, reversed a 2024 decision by the Pennsylvania Public Utility Commission. The

court's majority based its decision on the plain meaning of a provision of the AEPS Act which states that solar PV projects qualify for solar credits if they "[d]irectly deliver" the energy they generate to "a retail customer" of an electric distribution company.