

Energy Law: Month in Review - September 2026

October 8, 2026

by Zev Simpser, Brian Bell, and Nathan Webster

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

Massachusetts Ratchets Up State and Local Regulation of AI Data Centers

In early September, Governor Maura Healey of Massachusetts signed an executive order requiring that artificial intelligence data centers secure the approval of local communities as a precondition to proceeding with a given project. According to the terms of the order, data center developers will need to secure a "community benefits agreement" as a precondition to receiving permits from numerous state agencies, including the Department of Environmental Protection, the Energy Facilities Siting Board, and the Massachusetts Environmental Policy Act Office. Beyond requiring community benefits agreements, the order also mandates that developers mitigate utility costs to consumers, prohibits the use of nondisclosure agreements, and requires various state agencies to develop measures to limit data center impacts on the environment.

North Carolina Regulators Decline Approval of Duke Energy Gas Turbine

On September 18, 2026, North Carolina Utilities Commission (NCUC) denied Duke Energy's application for a certificate of public convenience and necessity required to construct a gas-fueled combustion turbine at its Smith Energy Complex in North Carolina. The NCUC objected strongly to the \$584 million price tag and noted that Duke appeared to be constructing the facility "based on anticipated data center customer additions." The NCUC rejected that anticipated growth as "insufficiently reliable for the Commission to act at this point." In rejecting Duke's application, the NCUC also noted that Duke had signed the White House Ratepayer Protection Pledge, in which it

Related People

- Zev Simpser
- Brian Bell
- Nathan Webster

Related Capabilities

- Energy & Natural Resources
- Electric Power
- Environmental, Social, Governance (ESG)
- Sustainability

represented that it would not shift data center costs to consumers. The NCUC observed that the record did not demonstrate how Duke “intends to adhere to its commitments under the Ratepayer Protection Pledge with regard to the Proposed Facility.” Notably, commission staff had actually supported the construction of the turbine, citing concerns about Duke’s reserve margins. The NCUC noted that it “understands the Public Staff’s expressed concerns,” but those concerns were outweighed by the NCUC’s reservations, including questions of demand.

Department of Energy Approves Funds for Grid Improvement

The U.S. Department of Energy (DOE) recently announced that it would fund 31 grid-improvement projects in 26 states. The funding initiative is part of the DOE’s “SPARK” initiative. The funding will include \$1.9 billion in federal funding from DOE and \$3.35 billion in recipient cost-sharing funding. The funds will go to projects designed to improve grid reliability and lower electricity costs. Recipients plan to reconductor over 1,500 miles of transmission lines and will deploy grid-enhancing technologies across approximately 21,000 miles. DOE stated that this initiative will make available over 23 additional gigawatts of electricity.

Texas Moderates Rules Governing Data Center Interconnection

The Texas Public Utility Commission adopted new regulations governing large-load interconnections. The rules impose a flat study fee of \$100,000 for all proposed interconnections, which departs from the initial proposal to impose study fees using a tiered system based on project size. Additionally, the final rule eliminates the PUC’s previous proposal to impose a non-refundable interconnection fee of \$50,000 per MW of contracted peak demand. The final rule also moderates the initially proposed regulations governing Electric Reliability Council of Texas (ERCOT) notifications for large-load customers’ non-utilized capacity. The proposed rules would have required notifying ERCOT within 30 days of missing a scheduled energization milestone by six months. The final rules, however, do not require informing ERCOT unless a scheduled energization milestone is missed by 24 months.

FERC Denies TransAlta 202(c) Cost-Recovery Plan

The Federal Energy Regulatory Commission (FERC) recently rejected TransAlta’s plan to recover \$19.9 million in expenses stemming from a DOE order in which DOE prohibited TransAlta from retiring its coal-powered Centralia power plant. TransAlta had previously intended to retire the facility at the end of 2025. TransAlta’s cost recovery plan proposed spending an additional \$23 million on repairs to continue operating the unit. FERC’s main objection had to do with geographic scope. TransAlta’s recovery plan called for recovering costs from California Independent System Operator (CAISO) and the Southwest Power Pool (SPP), but the DOE’s order requiring operation of the plant was designed to ensure reliability in the Northwest assessment area (Montana, Oregon, Washington, and parts of northern California and northern Idaho). Accordingly, FERC was unwilling to allow cost recovery from CAISO and SPP when the order that precipitated the additional costs only related to the Northwest assessment area. FERC informed TransAlta that it would only approve cost recovery from load-serving entities in

the Northwest assessment area. FERC's decision comes amid a rush of DOE emergency orders requiring the continued operation of coal-fired generating units.

Litigation

Appeals Court Upholds Washington Hydropower Plant With Caveats

In a September 21, 2026, [opinion](#), the Washington Court of Appeals largely upheld a Clean Water Act water quality certification by the Washington Department of Ecology for the Goldendale Energy Storage Project, a proposed pumped-water storage hydropower system adjacent to, but off-stream from, the Columbia River. A nonprofit (Columbia Riverkeeper) and the Confederated Tribes and Bands of the Yakama Nation appealed the certification, contending that it failed to impose necessary conditions and monitoring requirements to protect the water quality of the Columbia River. Most saliently, the plaintiffs argued that the project had the potential to leak 100 acre-feet of water per year into tributaries of the Columbia River. The Court of Appeals broadly rejected plaintiffs' challenge to the state's conclusion that "the project was designed not to leak." That said, the Court of Appeals did reverse on one narrow issue. Specifically, the court determined that the state's conclusion that "leakage from the project's tunnels would be monitored and reported" was not supported by the evidence because the certification "does not explicitly require monitoring and reporting to determine whether there is any leakage." Accordingly, the court remanded the matter to the state to impose monitoring and reporting requirements but otherwise affirmed the certification.

Legislative Developments

California Legislates Restrictions on Data Center Energy Use and Grid Costs

On September 21, 2026, California Governor Gavin Newsom signed seven bills broadly regulating data centers in the state. [SB 1168](#) directed the California Public Utilities Commission to assess the energy used by data centers. It also requires the PUC to pass costs of transmission and distribution upgrades and load increases on to data centers, rather than customers. [SB 886](#) and [SB 887](#) compel data centers to pay for infrastructure upgrade and generation costs, and wildfire mitigation costs, in addition to imposing environmental review. The statutes additionally increase local oversight of data centers. [AB 1577](#) imposes a monthly reporting requirement that requires data centers to supply energy consumption and efficiency data to the California Energy Commission. [AB 2383](#) contains incentives for data centers to use onsite clean energy generation. Finally, [AB 2469](#) and [AB 2619](#) require data center developments to assess water supply and develop a water scarcity plan. The statutes also mandate statewide water reporting as a precondition to obtaining and renewing business licenses.