DORSEY
DORSEY+WHITNEY LLP

Energy Law: Month in Review - February 2026

AUTHORSZev Simpser, Brian Bell, and Nate 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.

Related Capabilities

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

LITIGATION AND DISPUTES

Court of Appeals Invalidates Duke Energy Fuel Cost Recovery

The North Carolina Court of Appeals reversed an order of the North Carolina Utilities Commission ("NCUC") approving an energy fuel-cost recovery request by Duke Energy. The NCUC had previously issued two orders permitting Duke Energy Progress LLC and Duke Energy Carolinas LLC to recover losses stemming from fuel-cost changes in 2022. Here the NCUC permitted recovery of fuel costs from 2022. Staff, however, has recommended not allowing recovering, contending that state statute authorizes recovery only for the preceding 12-month test year. The Court of Appeals reversed, concluding that the provision of state statute authorizing the experience modification factor only permits recovery of fuel costs incurred during the 12-month test period. Applied to the case at hand, that interpretation would only permit recovery for costs incurred in 2023, not in 2022 (as was the case with Duke's recovery).

D.C. Circuit Affirms FERC Order Approving PJM Tariff Amendments

On February 10, 2026, a panel of the D.C. Court of Appeals upheld Federal Energy Regulatory Commission ("FERC") orders approving PJM Interconnection LLC's ("PJM") proposal to amend its tariff to prohibit energy efficiency resources from participating in its electricity capacity auctions. FERC approved the proposed amendments because it concluded that the changes (which relied upon a revised forecast of electricity demand) would lead to reduced costs for consumers. One affected energy-efficiency aggregator appealed FERC's order approving the proposed tariff amendment, contending that the

orders were unlawfully retroactive, arbitrary, and capricious. Affirmed Energy asserted that the order comprised unlawful retroactive ratemaking because it invalidated the energy-efficiency aggregator's existing right to offer $50 million in energy efficiency resources in PJM's capacity auction. The energy-efficiency aggregator also argued that FERC failed to adequately support its approval. The Court of Appeals, however, affirmed FERC's approval of the amendments. The court reasoned that the approval was not unlawfully retroactive because the tariff amendments only applied to future capacity auctions. The court also concluded that FERC: (1) adequately explained its decision that the amendments would lower costs; and (2) acknowledged the potential harm to the interests of the energy-efficiency aggregators.

Federal Injunction Mandates Wildlife Protecting Measures on Columbia and Snake Rivers

A federal judge in Oregon has ordered changes to the Federal Columbia River Power System's operations, the goal of which is the protection of Columbia River Salmon and Steelhead. In October of 2025, the State of Oregon, conservation groups, and Indigenous Nations moved for a preliminary injunction requiring certain operational changes recommended by state and tribal fishery managers. The goal of the operational changes is to improve fish survival as they migrate past dams and reservoirs on the Columbia and Snake Rivers. The movants filed the (ultimately successful) motion for preliminary injunctive relief after the Trump Administration withdrew the federal government from the 2023 Resilient Columbia Basin Agreement. That (now defunct) agreement had included: plans to save imperiled fish and provisions for affordable clean energy in the Pacific Northwest. In issuing the requested injunction, the court ordered the federal agencies operating the hydropower system to increase water spill levels over eight dams on the Columbia and Snake Rivers. The goal of the increased spill is to enable juvenile fish to pass over the dam, rather than through the turbines. In issuing the preliminary injunction, the court effectively foreclosed the federal government's plans to lower spill levels to below 2020 levels. The federal government intends to appeal the order.

REGULATORY AND LEGISLATIVE DEVELOPMENTS

FERC Rejects AEP Waiver Request

On February 10, 2026, FERC rejected American Electric Power ("AEP") utilities' waiver request to allow the sale of 750 MW of power in an upcoming PJM incremental capacity auction. The requested waiver would have allowed AEP to exceed the 1300 MW cap (set forth in the Reliability Assurance Agreement Among Load Serving Entities in PJM's tariffs) on how much capacity its utilities may sell into PJM's market. AEP took the position that the waiver would address resource adequacy needs of PJM. AEP also argued that the waiver would reduce fuel charges for customers. Although PJM supported the waiver, PJM's market monitor (Monitoring Analytics) and the PJM Power Providers Group (representing independent power producers) opposed the waiver. These opponents contended that the waiver merely represented an attempt to offload capacity that AEP acquired to serve data centers that ultimately failed to materialize. FERC agreed, stating that "AEP finds itself with excess capacity . . . because of its own

business decisions that led to the procurement of more capacity than it need." Accordingly, FERC denied the requested waiver.

Virginia and Indiana Lawmakers Advance Interconnection Bills

In late February, legislators in Indiana and Virginia advanced bills seeking to encourage additional generation or storage resources at power facilities with excess interconnection capacity. Specifically, the bills mandate the utilities and regulators jointly assess available interconnection capacity and potential uses of excess capacity, among other things. The goal of the legislation is to facilitate the connection of generation or energy storage systems to the grid at existing interconnection points, using the available interconnection rights. This concept, designed to efficiently use excess interconnection capacity, is known as surplus interconnection service, or "SIS." A SIS review process typically takes half the time of standard grid interconnection review. SIS also often leads to "brownfield" development at existing power plant sites and can lead to greatly reduced interconnection costs (compared with projects requiring *new* interconnection rights). In mandating assessment of potential SIS, legislators hope to meet growing electric demand.

California Orders Utilities to Procure an Additional 6 GW of Capacity

On February 26, 2026, the California Public Utility Commission ordered state load-serving entities ("LSE") to procure an additional 6 GW of capacity—2 GW each in 2030, 2031, and 2032. The order stipulates that the required new capacity must be zero-emissions, or otherwise eligible under California's renewables portfolio standard program. The order seeks to address expected reliability issues precipitated by growing demand. The Commission allocated procurement obligations to LSEs based on each LSE's share of the managed peak on the electric system.

Illinois State Regulators Bolster Renewable Energy Projects

In February, the Illinois Commerce Commission approved the Illinois Power Agency's 2026 Long-Term Renewable Resources Procurement Plan. The recently approved plan seeks to address uncertainty in the renewable energy field stemming from the One Big Beautiful Bill Act, which curtailed clean energy tax credits in the Biden-era Inflation Reduction Act. The Procurement Plan includes a provision that will allow revisions to renewable energy credit ("REC") contracts if changes at the state, federal, or local level may affect the viability of the contract for a particular project. Commentators expect this provision to make financial institutions more comfortable with REC contracts, notwithstanding recent federal action. The plan also finalized new contract level provisions permitting the use of surety bonds as a mechanism for facilitating renewable energy projects.