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The Energy Dispatch, the IEL's Young Energy Professional newsletter, contains substantive articles on trending legal issues in the energy industry, interviews, and professional development.

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Young Energy Professionals Highlight with Trevor Deason of Jones Day

Interview by: Katherine Raunikar, BakerHostetler

KR: What was your path towards becoming a lawyer?

TD: I've always liked being the person who helps others solve problems, and over time I realized that a career in law would allow me to do that in a meaningful and challenging way. Other career options just never seemed to fit quite right. During undergrad, I actually took a year off between my sophomore and junior years and moved to the Texas coast—Rockport—where I worked as a fry cook at Whataburger. That year gave me time to reflect and reset. When I decided to pursue a career in law, I fully committed and threw myself into it with everything I had. Looking back, that time away gave me the clarity and determination I needed to take the next step with purpose.

KR: How would you describe your practice?

TD: I'm a mid-level associate in a commercial litigation practice, and my work is fast-paced and constantly evolving. I'm increasingly taking on leadership roles in my cases—contributing to strategy, managing discovery and motion practice, and helping move matters forward efficiently. No two days are alike, and there's often an element of urgency that keeps things exciting. Litigation naturally comes with its share of emergencies, but I enjoy the challenge of thinking on my feet, staying organized under pressure, and working with my team to deliver results for our clients.

KR: What do you find most gratifying about your legal practice?

TD: I really enjoy the role of outside counsel—being part of the team that's in the trenches, doing the frontline work, and actually moving the case forward. There's something deeply satisfying about developing the strategy, drafting the arguments, and seeing the impact of that work as a case progresses. Litigation is a true team effort, and I find it rewarding to collaborate closely with clients and colleagues to solve complex problems under pressure. Each case brings a new challenge, and that constant evolution keeps me engaged and motivated.

KR: Do you have any advice for younger lawyers?

TD: For younger lawyers, my biggest piece of advice is to learn your client's business—understand what they do, what they sell, and what risks truly matter to them. That context helps you give practical, useful advice. I'd also emphasize the importance of learning how to communicate clearly and meet deadlines consistently. Those skills might sound basic, but they're foundational to building trust with both clients and colleagues. Finally, don't hesitate to reach out to attorneys whose careers you admire. Most people are happy to share their experiences if you approach them with genuine curiosity and gratitude—and those conversations can be invaluable early in your career.

KR: What do you like to do when you're not working?

TD: When I'm not working, I like to take walks and use that time to think—about my career, my profession, my schedule, and the Lord. Those moments of quiet help me reset and stay grounded. I also love spending time with friends, whether that's exploring Houston or visiting other cities together. It's a great way to recharge and enjoy good company outside of the fast pace of work.

Expert Interview with Nacho de Miguel of Peninsula

Interview by: Baldomero Casado, Foley Hoag LLP

Nacho de Miguel has more than two decades of experience in the energy industry. He currently serves as Head of LNG, Alternative Fuels & Sustainability at Peninsula, where he leads the company's efforts in sustainable energy, focusing on creating and managing the LNG and Alternative Fuels bunkering business. Previously, Nacho held several roles at Union Fenosa Gas, including Director of LNG Business Development, with responsibility for global LNG and natural gas origination and business development. Before joining Union Fenosa Gas, he worked

at Union Fenosa as Fuels Manager, negotiating and managing natural gas procurement for power plants in Spain and internationally. Nacho holds a Bachelor's degree in Business/Management Economics from the Universidad Complutense de Madrid, a Professional Development degree from IESE Business School, and a Curso Superior en Negocio Energético from the Club Español de la Energía.

BC: You are currently Head of LNG at Peninsula, a global marine fuel (bunkering) supplier. Could you explain the role that LNG is playing in the maritime transport sector today?

NM: The maritime industry, like many others, is currently undergoing a transition to cleaner energy. Today's global fleet still relies largely on fuel oil, which is highly polluting, mainly in terms of CO_2, NO_x, and SO_x emissions. In recent years, driven by increasing regulatory pressure on emissions, alternatives to heavy fuel have begun to emerge. One immediate solution is liquified natural gas (LNG), including its green version, BioLNG. Compared to fuel oil, LNG emits around 23–25% less CO_2 and virtually eliminates NO_x, SO_x, and particulate emissions, so the environmental benefits are clear. If complemented with a percentage of BioLNG as a drop-in solution, these environmental benefits far exceed the emission reduction targets set by European regulations. For this reason, LNG is one of the commercially accessible and most efficient alternatives to reduce emissions in shipping.

The LNG trade has been globally developed for many years. In liquid form (–163ºC and 600 times less volume), natural gas can be transported efficiently in large quantities for electricity generation and industrial processes. Interestingly, LNG carriers were the first ships to use LNG as marine fuel, as they have dual-fuel engines, originally designed to consume the boil-off generated inside the tanks.

Later came ships from other segments, whose engines were designed to burn vaporized LNG. The fleet currently operating on LNG propulsion is approaching 1,000 vessels, with about 500 more under construction or on order (around 8.5% of new builds in shipyards). Regarding supply infrastructure, many global bunker hubs already have LNG suppliers, and the international fleet of LNG bunker barges currently exceeds 70 units.

Against this backdrop, five years ago Peninsula decided to develop its own LNG commercial offering, investing resources in hiring and building a dedicated team and constructing our first LNG supply vessel, Levante LNG, with 12,500 m^3 capacity, built at the prestigious Hyundai Mipo shipyard in South Korea. Today, we supply LNG with our vessel in the Strait of Gibraltar and Western Mediterranean and also conduct reselling (supply trading deals) operations in Southeast Asia, the Americas, and the Far East.

Naturally, Peninsula's LNG capabilities have since been complemented by other alternative fuels (biofuel, ammonia, and methanol) as well as decarbonization and energy efficiency functions, creating the Alternative Fuels & Sustainability division, which I personally lead from Madrid, providing global service to Peninsula's 20 offices worldwide.

We are currently building a second LNG supply vessel of 18,000 m^3, also at Hyundai Mipo, and have an option for an additional unit. Furthermore, we are developing a business expansion plan to deploy these new vessels in additional hubs with LNG demand potential.

BC: Has your career in energy always been connected to the natural gas and LNG sector? Tell us about your early professional background.

NM: Although I started my professional career in banking, I quickly focused on the energy sector. I began at CEPSA (now rebranded as Moeve), a Spanish oil company, as a marine fuels trader. As *The Energy Dispatch* speaks to a new generation of energy professionals, let me share a short story here: During my time at CEPSA, one of my accounts was a small company led by a young, smart, and ambitious professional with just two employees, taking its first steps in the bunkering world. Fast forward 22 years, that same company—Peninsula—had grown into a global leader in marine fuels, with over 450 employees. And then, they invited me to join them to build their LNG and alternative fuels division. The lesson is simple: In your career (and in life!), always strive to leave a positive mark—through your actions, your example, and your relationships. You never know when your paths will cross again, and when the seeds you plant will turn into opportunities you never imagined.

From CEPSA, I moved to one of Spain's main energy companies, Union Fenosa (now part of Naturgy), where I had the opportunity to work in the electricity sector, mainly in power generation with different technologies, primarily motors plants and combined cycles gas turbines (CCGTs). My responsibilities focused on supplying the necessary fuel for Union Fenosa's plants, both in Spain and those deployed worldwide: Dominican Republic, Kenya, Mexico, etc.

BC: How did you transition into the natural gas and LNG sector?

NM: Union Fenosa was an incredibly bold and pioneering company. As Spain's new generation capacity increasingly relied on natural gas and LNG, it created Union Fenosa Gas (UFG), a company dedicated exclusively to the LNG value chain—from procurement to maritime transport and regasification.

Here's another story worth sharing: Years later, a former boss reached out when he needed someone to help manage UFG's LNG supply contracts, covering everything from maritime transport to the operation of LNG carriers and their complex loading and unloading processes. He

called, offered me a place on his team, and I didn't hesitate for a second. Opportunities often come from the trust and relationships you've built along the way. Every interaction matters—one day, that call might change the course of your career.

At UFG, I had the opportunity to make dozens of good friends and lead different teams across various roles during a rewarding stage that lasted almost 20 years.

BC: In your work in international business development for natural gas and LNG, which projects have been the most defining for you, and what challenges did you face in them?

NM: Business development is hard to define because it must adapt to a company's strategic objectives and its circumstances.

Union Fenosa Gas went through stages where the role involved seeking new markets and developing new LNG import infrastructure, as we did in Singapore, Dubai, and some Latin American countries with no prior LNG experience. At other times, the focus was on identifying new LNG supply sources. We worked on opportunities across a long list of countries, including Equatorial Guinea, Cameroon, Nigeria, Australia, The Philippines, Canada, etc., and of course the United States, where we originated commercial relationships with several companies that later became key players and turned the U.S. into the world's leading LNG exporter. From that period, I cannot fail to mention Charif Souki and his fabulous initial team at Cheniere, who were turning around the business plan of an almost bankrupt LNG import terminal and transforming it into an export facility; and two outsiders unknown in our sector at the time—a lawyer and a financier—who aimed to revolutionize the industry with modular LNG plant construction: Bob Pender and Mike Sabel, founders of the successful U.S. liquefaction plants developer Venture Global.

For me, it has been a true privilege to have crossed paths and built relationships with people who later achieved international success in our LNG industry—and to have done so before they became globally recognized names.

BC: With a career in the LNG sector spanning the past 20 years, how have you seen the industry evolve?

NM: This is an interesting question, especially for younger professionals who may not have witnessed the industry's evolution as those of us who are now "LNG veterans" (ha, ha, ha). The biggest change is that in the early 2000s, developers were obsessed with passing through risk in every element of the value chain—from gas exploration and production, liquefaction at export plants, transport on LNG carriers, regasification plant construction, and consumption, mainly in CCGTs. This risk-transfer mindset meant all contracts were linked (Production Sharing Contract, feed gas SPA, tolling agreement, offtake agreement, time charter, regas capacity agreement, and back to gas SPA, usually in a CCGT). This made LNG a long-term business with virtually no spot market. As projects came online, surplus or deficit volumes appeared, gradually opening a short-term market that has grown steadily, with major trading houses (Glencore, Trafigura, Gunvor, etc.) becoming strong players. That said, there is still interest in medium and long-term offtake contracts to reduce volatility and provide portfolio stability. Perhaps as a result, LNG pricing shifted from oil-to-gas competition—where hydrocarbon indexes set LNG prices—to gas-to-gas competition, increasing the relevance of the three international gas indexes in LNG transactions: Henry Hub, TTF, and JKM.

BC: What personal skills or qualities would you highlight as essential for someone who wants to work in international business development in the natural gas and LNG sector?

NM: The international LNG business is not as large as crude or products, and relationships are less aggressive, so you can still know personally or have references of who's who in key companies and markets. Because it is a relatively "young" business, people may change companies, but relationships and even friendships remain. I would advise anyone wanting to work in this business—from commercial to business development roles—to first get academic training, including fundamentals of gas and LNG, not only technical aspects but also contractual ones. Combine this with a willingness to meet people, build personal relationships, spend time with industry colleagues, and travel to places that are not always tourist destinations. The many LNG conferences held annually worldwide, enable this interaction and help develop these relationships, which ultimately become one of the main sources of business opportunities.

Additionally, you need an adventurous spirit and the ability to assess the viability of emerging opportunities. Unlike pure LNG trading, LNG project development and long-term contracts are capital-intensive, so of the many originated opportunities, only one or two will succeed.

Aware that *The Energy Dispatch* reaches legal professionals, I'd like to close this interview by sharing that on many of those international trips to places where we were developing projects, I was accompanied by colleagues from our legal department. Their legal support was essential to sound project management and to the projects' initial contractual architecture. But beyond that, since they were generally young and eager to have fun, we enjoyed the lighter moments those trips offered. Fast forward: many of those young lawyers who once explored Equatorial Guinea, the Philippines, or Canada with me are now brilliant partners or associates at leading international law firms. Seeing their success fills me with pride and reminds me of something essential: the people you work with today may become tomorrow's industry leaders. Cherish those connections—they are the true legacy of any career.

Emergency Exit: D.C. Circuit Restores Clean Air Act Title V Emergency Defense in *SSM Litigation Group v. EPA*

Tim Sowecke and Tyler A. Self, GableGotwals

In its recent decision in *SSM Litigation Group v. EPA* (published September 5, 2025), the D.C. Circuit struck down EPA's 2023 rescission of the long-standing Clean Air Act ("CAA") Title V "emergency affirmative defense," holding that the agency's action was arbitrary, capricious, and contrary to law. For three decades, Title V permits contained a narrow defense shielding operators from liability for excess emissions caused by sudden and unforeseeable emergencies, provided the facility was otherwise properly operated and took reasonable steps to minimize emissions.

The U.S. Environmental Protection Agency ("EPA") rescinded this defense in 2023, reasoning that it unlawfully infringed on judicial authority to impose civil penalties and rendered emission limits non-continuous under the CAA. The D.C. Circuit disagreed, drawing a sharp distinction between impermissible limits on judicial remedies and permissible defenses to liability, and holding that an affirmative defense does not undermine the Act's requirement for continuous emission standards. The decision restores an important safeguard to regulated entities, clarifies the limits of EPA's authority when it comes to affirmative defenses and judicial remedies, and underscores the need for agencies to provide legal reasoning and policy rationales when rescinding entrenched regulatory provisions.

Key Takeaways

Emergency Defense Restored

- The D.C. Circuit unanimously restored the Title V Emergency Affirmative Defense, which EPA eliminated in 2023, providing facilities a crucial legal tool to defend against Clean Air Act ("CAA") violations caused by unforeseeable emergency events.

EPA Authority Limited

- The court reinforced that EPA may not eliminate defenses to liability by recasting them as unlawful intrusions on judicial penalty authority or as "non-continuous" exemptions. The distinction between liability defenses and remedy limitations is central to the decision.

Continuity Requirement Clarified

- The decision makes clear that the Clean Air Act's requirement for "continuous" emissions standards does not bar the use of affirmative defenses; standards always remain enforceable, even if liability may be avoided in narrow circumstances.

Regulatory Durability Requires Policy Support

- Because EPA offered no independent policy justification for its rescission, the court had little difficulty finding the rule legally defective. Agencies must pair legal reasoning with policy rationale when undoing decades-old programs.

Compliance Strategy Implications

- Facilities should review and update, if needed, compliance plans and reporting protocols (including pre-submission review of Title V deviation reports), Title V permit terms, and enforcement defenses in light of the revived emergency defense, while also recognizing that courts remain the ultimate arbiters of whether the defense applies in a given case.

Background: EPA's Controversial 2023 Rule Change

For over three decades, EPA regulations provided facilities with an affirmative defense for CAA Title V Permit violations caused by emergency circumstances. This defense allowed facilities to avoid liability for excess emissions during "sudden and reasonably unforeseeable events beyond the control of the source, including acts of God."

To qualify for the defense, facilities had to demonstrate that: (1) an emergency actually occurred; (2) the facility was being properly operated; and (3) all reasonable steps were taken to minimize excess emissions during the emergency.

The regulations defined an emergency as "any situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God," that "causes the source to exceed a technology-based emission limitation under the permit, due to unavoidable increases in emissions attributable to the emergency." 40 C.F.R. § 70.6(g)(1) (2022). If the emergency defense applied, a permittee would not be found in violation of the Clean Air Act for exceeding emissions limitations.

In 2023, EPA rescinded this long-standing defense in a final rule, arguing it was unlawful on two grounds. First, it encroached on the judiciary's authority to impose civil penalties; and second, it functioned as an impermissible exemption that rendered emission standards non-continuous in violation of the CAA. The rescission was particularly significant for oil and gas operations, power plants, chemical factories, and other heavy industry sources facing inherent risks of equipment failures, natural disasters, and other emergency events causing temporary emission exceedances despite proper operation and maintenance.

The D.C. Circuit's Decision: *SSM Litigation Group v. EPA*

Writing for a unanimous three-judge panel, Judge Neomi Rao comprehensively rejected both of EPA's legal justifications for eliminating the emergency defense. The court's analysis provides important clarity on the scope of EPA's regulatory authority and the nature of affirmative defenses under environmental law.

Affirmative Defense v. Remedial Limitation

The court distinguished between two types of regulatory "defenses":

- **Complete Affirmative Defenses** that provide a total defense to liability (i.e., the Title V Emergency Defense).
- **Partial Defenses**, which only limit available remedies after a violation is established.

Citing its 2024 decision in *Environmental Committee of Florida Electric Power Coordinating Group v. EPA*, the court emphasized that complete affirmative defenses are permissible because they address the "antecedent question of liability" rather than constraining judicial remedial authority. 94 F.4th 77 (D.C. Cir. 2024).

Defense v. Exemption

The court also rejected EPA's argument that the emergency defense impermissibly functioned as an exemption from emission standards. The court explained the distinction:

> An affirmative defense allows a defendant to avoid liability, but it does not alter the underlying legal requirements. The very concept of an affirmative defense assumes that a legal standard remains in force, because otherwise there would be no claim—and no need for an affirmative defense.

(Internal citations omitted). This confirms that emission standards remain "continuous" even when an affirmative defense is available, because the standards themselves are never suspended or lifted.

What This Means for Title V Permittees

The decision restores a critical defense for Title V facilities facing CAA enforcement actions or citizen suits arising from emergency-related emission exceedances. This is particularly important for oil and gas operations, power generation, chemical manufacturing, refineries, and metals production.

While the emergency defense provides important protection, facilities should remember that it requires strict compliance with specific criteria: the event must be sudden and reasonably unforeseeable; the event must be beyond the facility's control; the facility must be properly operated during the event; and all reasonable steps must be taken to minimize excess emissions.

To support ongoing compliance, confirm whether your Title V permit incorporates or references the emergency affirmative defense language; ensure operational protocols include a method of clear documentation of emergency events and steps to minimize emissions; and ensure plant operators are up to date with respect to emergency protocols.* EPA is reviewing the decision for potential appeal, though it is not yet clear whether EPA will appeal.

** EPA's potential appeal would go to the Supreme Court, given the D.C. Circuit's exclusive jurisdiction over nationally applicable EPA rules.*

Federal and Colorado Action on Data Centers and Large Power Loads

RJ Colwell, Davis Graham

There has been a recent flurry of regulatory activity in both Washington, D.C. and Colorado as federal and state regulators work to establish new frameworks for data center interconnection and co-located generation. The Secretary of Energy directed FERC to consider an Advanced Notice of Proposed Rulemaking on large load interconnection procedures, FERC issued an order requiring PJM to develop co-location tariff provisions, the Colorado Public Utilities Commission directed Xcel Energy to file large-load tariff principles by January 2026, and FERC rejected Tri-State's proposed large load tariff on jurisdictional grounds. These developments underscore ongoing efforts to adapt existing frameworks to how utilities and regulators approach data center interconnection, cost allocation, and co-located generation.

DOE's Direction to FERC

On October 23, 2025, Secretary of Energy Chris Wright directed the Federal Energy Regulatory Commission (FERC or Commission) to consider an Advanced Notice of Proposed Rulemaking (ANOPR) addressing interconnection procedures for large loads (defined as those exceeding 20 megawatts (MW)), and requesting that FERC issue a final rule by April 30, 2026. Secretary Wright issued the ANOPR pursuant to Section 403 of the Department of Energy Organization Act, which empowers the Secretary of Energy to propose rules to FERC, but does not require FERC to implement them. Additionally, FERC issued a notice inviting comments regarding the ANOPR on October 27, 2025, in Docket No. RM26-4-000.

DOE's proposed ANOPR advances the position that FERC has jurisdiction over large load interconnections through FERC Order No. 888, based on four legal theories:

- large load interconnections are a critical component of open access transmission service analogous to generator interconnections under FERC Order No. 2003;

- such interconnections directly affect jurisdictional wholesale rates;
- the proposal does not intrude on states' retail electricity jurisdiction; and
- FERC's exclusive jurisdiction over transmission of electric energy in interstate commerce encompasses interconnection service.

The ANOPR enumerates 14 guiding principles, including limiting FERC's authority to interconnections directly to transmission facilities, applying reforms only to new loads greater than 20 MW, studying load and hybrid facilities alongside generation projects, implementing standardized deposits and withdrawal penalties, and allocating 100% of network upgrade costs to the load.

Whether FERC has statutory authority to regulate large load interconnections remains uncertain. Any rules promulgated will face scrutiny under the major questions doctrine (*West Virginia v. EPA*) and review under *Loper Bright Enterprises v. Raimondo*, which held that courts should not apply *Chevron* deference to agency interpretations of ambiguous statutes. FERC's notice inviting comments on the ANOPR was procedural only and did not discuss or endorse the four legal theories noted above. FERC's own precedent also highlights this ambiguity: in rejecting Tri-State's large load tariff (discussed below), FERC stated that the proposal may regulate "terms and conditions of a Customer's retail service in ways that are beyond the Commission's authority." Additionally, the National Association of Regulatory Utility Commissioners (NARUC) has urged FERC to substantially modify the ANOPR, asserting it infringes on states' retail electricity jurisdiction. These challenges create substantial uncertainty as to whether FERC will adopt the ANOPR in whole, in part, or at all.

FERC's PJM Co-Location Order

On December 18, 2025, FERC unanimously issued an order directing PJM Interconnection (PJM) to revise its tariff to address co-located loads at generating facilities. The order arose from FERC's show cause proceeding following high-profile co-location arrangements, including Amazon's data center at Talen Energy's Susquehanna nuclear plant located in Pennsylvania and Microsoft's Three Mile Island restart agreement.

FERC found PJM's existing tariff unjust and unreasonable due to lack of clarity regarding co-located loads. The order requires PJM to offer four transmission service options:

- traditional Network Integration Transmission Service for entire nameplate load;
- interim non-firm service permitting expedited construction before grid upgrades are completed, with acceptance of curtailment risk;
- firm contract demand service for only the portion of load expected to be served by the grid; and
- non-firm contract demand service (which carries curtailment risk).

The order directs PJM to propose mechanisms, such as minimum monthly charges, to ensure that costs of maintaining grid reliability and backup capability are appropriately allocated, even for facilities with limited grid usage or rarely used backup service. Final tariff details remain pending PJM's compliance filings (due in January 2026) and further FERC review.

While Colorado is not within PJM's footprint, FERC's order signals potential federal regulatory approaches to co-location and may inform or influence Colorado's frameworks. For example, Xcel Energy's large-load tariff filing due in January 2026 could potentially incorporate concepts from the PJM order.

Colorado PUC Directive to Xcel Energy

In late October 2025 (with a written decision issued in December 2025), the Colorado Public Utilities Commission (PUC) adopted guiding principles for service to large-load customers and directed Xcel Energy to file a more detailed large-load tariff proposal in January 2026 as part of Xcel's Electric Resource Plan proceeding (Proceeding No. 24A-0442E). The PUC-adopted guiding principles include measures such as upfront fees and security deposits, minimum 15-year service contracts, minimum bill requirements for reserved capacity, and early exit fees if the developer terminates service before the contract term.

Xcel's forthcoming large-load tariff proposal is expected to address how co-located generation affects cost allocation. This may include differentiated transmission charges that reflect actual grid usage rather than full nameplate capacity for data centers with onsite generation, though minimum charges for maintaining backup grid service could also apply, similar to concepts in FERC's PJM order.

Xcel's formal tariff filing could inform approaches by other Colorado utilities and cooperatives addressing large loads, though structural and governance differences among utilities may limit direct applicability, and the tariff's terms are expected to materially affect project economics and feasibility for data centers requiring grid-supplied power or backup service.

Tri-State's Rejected Large Load Tariff

In August 2025, Tri-State proposed a High-Impact Load Tariff at FERC (Docket No. ER25-3316) for loads exceeding 45 megawatts. On October 27, 2025, FERC rejected the tariff, determining that provisions requiring member cooperatives' retail customers to execute agreements and related security deposit requirements exceeded FERC's jurisdiction over wholesale transactions under Federal Power Act sections

205 and 206. As of this writing, no revised tariff has been proposed.

FERC's rejection underscores the jurisdictional tensions evident in DOE's ANOPR. Developers considering sites in Tri-State member cooperative territories (which include 15 Colorado cooperatives) may want to consider engaging early with both the local distribution cooperative and Tri-State to understand capacity availability and study timelines. Until a revised framework is in place, large load interconnection in Tri-State territories will follow existing procedures.

Potential Colorado Implications

These federal and state actions signal several key themes:

Cost Allocation Based on Actual Use. Both FERC's PJM order and Colorado's emerging frameworks signal emerging interest in charging data centers based more closely on grid usage, rather than full nameplate capacity, though minimum charges for backup service could still apply.

Developer Financial Commitments. Utilities and regulators are requiring upfront security deposits, long-term contracts, and early exit fees to ensure speculative projects do not force infrastructure investments that other ratepayers ultimately bear. These measures aim to protect existing ratepayers from bearing the costs of speculative or withdrawn projects, while FERC's PJM order also creates pathways for developers willing to accept curtailment risk to potentially expedite timelines.

Co-Location Frameworks. FERC's PJM order and DOE's ANOPR signal that co-located generation can be a viable model when structured to protect ratepayers. However, the requirement that generators and co-located loads fund transmission upgrades to maintain service for existing customers means co-location does not eliminate grid-related costs.

Federal-State Jurisdictional Tensions. The DOE ANOPR and Tri-State's rejected tariff filing at FERC highlight ongoing tensions between federal and state authority. FERC's own statement in the Tri-State rejection regarding the limits of its authority, combined with NARUC's opposition to the ANOPR, suggests that any expansion of federal jurisdiction will be contested.

Interconnection Timelines. Despite efforts to clarify rules, physical interconnection timelines (driven by studies, network upgrade design, and construction) remain lengthy (currently estimated at anywhere from 24 to 48 months).

Considerations for Colorado Stakeholders

Companies considering data center investments in Colorado may wish to consider the following:

- Xcel's January 2026, tariff filing will establish initial service terms, cost allocation, and co-location treatment for the state's largest utility. Interested stakeholders should review the filing (Docket No. 24A-0442E).
- Early engagement with Xcel, Tri-State, or other serving utilities during site selection can provide clarity on capacity availability, interconnection study timelines, and how emerging tariff frameworks may affect project economics.
- With regulatory clarity increasing and cost allocation frameworks becoming more defined, co-located generation should be evaluated. However, financial models should account for network upgrade obligations that may be required when generators "leave the grid."
- Stakeholders may wish to monitor FERC Docket No. RM26-4-000 and consider filing comments to ensure any federal framework accommodates Colorado's regulatory structures, particularly given ongoing jurisdictional contests and active comment proceedings. Additionally, monitoring PJM's January 19, 2026 report to FERC and subsequent tariff implementation may provide insights into frameworks that could be adopted in other regions.
- Power supply strategy – whether traditional utility service, co-located generation, hybrid models, or acceptance of curtailment risk through non-firm arrangements – should be determined early and integrated with cooling design, air permitting, water rights strategy, and land use review.

The convergence of federal action by DOE and FERC, Colorado PUC directives, and Tri-State's jurisdictional challenges creates a dynamic regulatory environment for data centers and large loads in Colorado. While some clarity is emerging, significant questions remain regarding implementation, cost allocation details, and the interplay between federal and state authority.

State Primacy for Permitting Class VI CO2 Injection Wells: A Refresher and a Texas-Sized Update

Luke Ohnmeis, O'Melveny & Myers LLP

Safe Drinking Water Act and Related Regulations

The Safe Drinking Water Act (SDWA), codified at 42 U.S.C. §§ 300f–300j-27, was enacted in 1974 as a comprehensive federal statute aimed specifically at safeguarding public drinking water systems and underground sources of drinking water from contamination. Congress passed the SDWA amid growing national concern that diffuse and unregulated underground disposal of industrial wastes threatened long-term water quality. The statute directed the U.S. Environmental Protection Agency (EPA) to establish national standards for both public drinking water systems and subsurface injection practices that might "endanger" those water sources. *Id.* § 300g-1.

To carry out this mandate, Congress authorized EPA to regulate all "underground injection which endangers drinking water sources" under Part C of the SDWA, 42 U.S.C. §§ 300h to 300h-8, commonly known as the Underground Injection Control (UIC) program. The statutory definition of "underground injection," found at 42 U.S.C. § 300h(d)(1), is broad: "the subsurface emplacement of fluids by well injection." (The definition excludes two categories of underground injection unrelated to CO2 storage: "the underground injection of ***natural gas*** for purposes of storage; and the underground injection of fluids or propping agents (other than diesel fuels) ***pursuant to hydraulic fracturing operations*** related to oil, gas, or geothermal production activities." 42 U.S.C. § 300h(d)(1)(B) (emphases added).) This definition covers both intentional disposal wells and injection incidental to industrial or energy-production activities. *See id.* EPA implemented the UIC program through regulations codified at 40 C.F.R. pts. 144–147, which establish technical standards for well construction, operation, monitoring, and closure, as well as the process for states to apply for authority to permit UIC wells.

More specifically, 42 U.S.C. § 300h(b)(1)(A) instructs EPA to promulgate minimum requirements for state underground-injection programs designed to prevent contamination of drinking water. Under 42 U.S.C. § 300h-1(b), a state may obtain "primary enforcement responsibility," more commonly known as "primacy" if it demonstrates that its regulations meet the requirements of the federal rules promulgated by EPA and that it possesses adequate legal authority, personnel, and enforcement mechanisms. *See* 40 C.F.R. § 145.1(c). EPA retains direct implementation authority in any state that has not received primacy. 42 U.S.C. § 300h-1(c). States may apply for primacy with respect to one or more classes of wells regulated under the UIC.

The five original well classes (I–V) were not established by the SDWA itself but rather by EPA. Those regulations, now codified at 40 C.F.R. § 146.5, classify wells based on the type of fluid injected and the depth and purpose of injection:

- Class I wells inject industrial and municipal waste beneath the lowermost underground source of drinking water.
- Class II wells are associated with oil and gas production activities, including disposal and enhanced hydrocarbon recovery.
- Class III wells inject fluids for solution mining.
- Class IV wells inject hazardous or radioactive waste into or above USDWs and are generally prohibited.
- Class V wells are wells not included in Classes I-IV or Class VI, generally those used to inject non-hazardous fluids into or above underground sources of drinking water, such as stormwater drainage wells.

By the late 2000s, advances in carbon capture and storage (CCS) technology—injecting captured carbon dioxide (CO2) into deep geologic formations for long-term storage—posed new regulatory challenges. While CO2 injection for enhanced oil recovery was already regulated under Class II, the injection of large volumes of CO2 for the primary purpose of geologic sequestration presented novel risks. In response EPA promulgated the Federal Requirements Under the Underground Injection Control (UIC) Program for Carbon Dioxide (CO2) Geologic Sequestration (GS) Wells; Final Rule, 75 Fed. Reg. 77,230 (Dec. 10, 2010), which created a new Class VI of wells specifically for CO2 sequestration. *See id.* at 77,233–77,235 (discussing background and purpose of regulation).

Federal Tax Incentives

The recent expansion of federal tax incentives, particularly the carbon dioxide sequestration credit under Section 45Q of the Inflation Reduction Act, codified at 26 U.S.C. § 45Q, has significantly increased commercial interest in developing Class VI wells. Section 45Q provides a dollar-per-metric-ton credit for qualified carbon dioxide that is either (1) captured and permanently stored in secure geologic formations, or (2) utilized in certain industrial or chemical processes that result in demonstrable sequestration. 26 U.S.C. § 45Q. These enhanced incentives have made Class VI projects financially viable for a broader range of developers, including utilities, ethanol producers, and midstream companies. Because claiming the Section 45Q credit requires compliance with federal geologic-sequestration standards, *see* 26 U.S.C. § 45Q(f)(2), developers have increasingly sought project locations in states with primacy to streamline the permitting process and accelerate eligibility.

State Primacy for Permitting Class VI Wells

As of November 2025, six states have been granted Class VI primacy: North Dakota, Wyoming, Louisiana, West Virginia, Arizona, and Texas. North Dakota became the first state to obtain Class VI primacy effective April 24, 2018. 83 Fed. Reg. 17,758. Wyoming followed in 2020, receiving Class VI primacy effective October 9, 2020. 85 Fed. Reg. 64,053. Louisiana obtained Class VI primacy effective February 5, 2024. 89 Fed. Reg. 703. West Virginia received Class VI primacy effective March 28, 2025, extending state-administered Class VI oversight into the Appalachian Basin. 90 Fed. Reg. 10,691. Arizona became the fifth state with Class VI primacy effective October 15, 2025, marking the first approval in the Southwest. 90 Fed. Reg. 44,327.

On November 12, 2025, EPA announced a final rule approving Texas's request to administer permitting for Class VI underground injection wells under the SDWA effective December 15, 2025. 90 Fed. Reg. 51,021. With this approval, Texas will implement UIC programs covering all well types (Class I–VI), consolidating oversight within the state and allowing for better coordination and improved efficiencies. According to EPA's announcement, the final rule will become effective 30 days after publication in the Federal Register. EPA also noted that publication may be delayed by a lapse in government funding, which could affect the precise effective date. Notwithstanding timing of publication, the approval reflects EPA's conclusion, after comprehensive technical and legal review, that Texas has adequate legal authority, personnel, and enforcement mechanisms to administer the program.

Texas Implementation and Outlook

Texas's refreshed UIC program will be administered by the Railroad Commission of Texas (RRC). Prior to approval, the RRC submitted its formal application to EPA and executed a Memorandum of Agreement with the agency on April 29, 2025, outlining jurisdictional boundaries, reporting obligations, and commitments to maintain standards promulgated under the SDWA. With EPA's final approval in place, developers seeking to permit Class VI wells in Texas will apply directly to the RRC, which is expected to integrate Class VI well oversight with the state's established UIC framework. EPA's announcement emphasizes that state administration is intended to reduce duplicative federal-state processes, shorten review timelines, and provide greater regulatory certainty for projects aligned with Section 45Q and broader CCS deployment. This approval of Texas's primacy for Class VI wells accelerates the geographic expansion of state-administered CCS permitting and is likely to catalyze additional investment in CO2 sequestration projects in the state. EPA's announcement is available at: https://www.epa.gov/newsreleases/epa-grants-state-texas-primacy-protect-underground-water-resources.

Powering Your Personal Brand: A Guide for Energy Professionals

Barbara Light, Norton Rose Fulbright US LLP

The energy sector is ever evolving. Innovation, sustainability, and digital transformation are reshaping the industry, which means making your professional brand known is increasingly important. It's your professional identity, your reputation, and your career accelerator.

Why Personal Branding Matters in the Energy Sector

Generally speaking, we are consuming information about each other constantly—we are inundated with updates on LinkedIn and other social media sites. A well-crafted personal brand differentiates you in a competitive market, builds trust with clients, employers, and peers, opens doors to leadership roles, speaking engagements, and collaborations, and aligns your career with your values and long-term goals.

Further, studies show that personal branding is a key component of professional success. Moore, Karl. "Why Personal Branding Matters More Than Ever Before." Forbes. April 21, 2025. As Karl Moore states, "[P]eople who actively shape and communicate their personal brand feel more empowered and are seen as more employable." *Id.*

Step-by-Step: Building Your Brand as an Energy Professional

Identify Your Identity

The journey to build a strong personal brand begins with you. Spend time reflecting on what sets you apart. What energizes you professionally? What unique skill sets do you have or are you looking to develop? What talent or skills are you most proud of? Answering introspective questions such as these can help you identify the uniquely "you" components of your brand.

Developing your brand should also include feedback from your colleagues or other members of your network. *Id.* This will help you understand how others are already perceiving your brand.

Craft a Compelling Brand Story

Your brand story should reflect the expertise, purpose, and passion you identified in Part 1. Think beyond job titles—focus on outcomes and impact. Dewan, Sho. "5 Steps To Build A Killer Personal Brand." Forbes. August 14, 2025. This is a highly personal process, as "[y]ou have to communicate your identity to your audience and show empathy by making your story relatable and authentic." *Id.*

LinkedIn: Your Personal Branding Power Tool

Optimize Your Profile

Use a professional photo, write a headline that includes keywords and your niche, and craft a summary that highlights achievements, values, and goals. List relevant skills and ask for endorsements.

Engage with Industry Content

Share articles on energy trends, engage with individuals in your network's posts, and write LinkedIn articles or blog posts to showcase thought leadership.

Broadcast Your Brand

Use LinkedIn's media features to upload project photos, case studies, certifications, and presentations.

Final Thoughts

Your personal brand is your professional legacy. In the energy sector, where innovation is a constant, it's essential to communicate who you are, what you do, and why it matters.

Start small: update your LinkedIn headline, share a post, or write a short article. Over time, these actions build a brand that speaks for you—even when you're not in the room.

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