

# POWER PLAY: DOJ'S ANTITRUST DIVISION PUTS ELECTRICITY MARKETS, AND DIGITAL INFRASTRUCTURE UNDER THE MICROSCOPE



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For nearly fifteen years, DOJ deferred to FERC and state regulators on electricity merger review. That posture ended on December 5, 2025, when the Antitrust Division—joined by the Attorney General of Texas—filed a complaint and proposed consent decree requiring divestiture of six power plants to resolve concerns arising from Constellation Energy's \$26.6 billion acquisition of Calpine. It was the first time since the 2011 *Exelon/Constellation* matter that the Division sought structural relief in a generation merger, and it went beyond what FERC itself required. The complaint is notable not just for what DOJ required, but for how it got there. Rather than leaning on share thresholds or HHI screens, the Division articulated a portfolio-effects theory: the combined firm would have an "enhanced ability and incentive" to withhold output across its plants in PJM and ERCOT, with market-wide pricing consequences. That analytical posture—reinforced by AAG Slater's February 2026 op-ed on electricity markets—signals an enforcement framework dealmakers in power, utility, and data center transactions should take seriously. Parties should expect scrutiny beyond sector regulators, stress-test antitrust risk allocation in deal documents, and prepare for market-definition battles that do not map onto traditional geographic analysis.

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# I. INTRODUCTION

The U.S. Department of Justice Antitrust Division (the “DOJ” or “Division”) has signaled heightened interest in electricity generation and data center transactions—just as deal activity in these sectors is surging. In a February op-ed, then-Assistant Attorney General Abigail Slater outlined the Division’s approach to electricity markets and indicated a willingness to take enforcement action to protect consumers from “unlawful consolidation” and “anticompetitive practices.”<sup>2</sup> The op-ed arrived amid heightened bipartisan political scrutiny of electricity and power generation markets, with policymakers at the state and federal levels paying close attention to the sector, along with the DOJ’s first enforcement action in an electricity merger in over 15 years (*Constellation/Calpine*).

Ms. Slater departed the Antitrust Division shortly after the op-ed’s publication, but, continued scrutiny of electricity and digital infrastructure transactions is expected. With surges in energy prices, electricity affordability has emerged as a bipartisan “kitchen table” issue, and the Trump Administration has identified data center buildout as a national security and strategic priority—positions reflected in the July 2025 Executive Order on Accelerating Federal Permitting of Data Center Infrastructure and the accompanying AI Action Plan.<sup>3</sup> Acting AAG Omeed Assefi has publicly signaled his intent to continue the enforcement program Ms. Slater set in motion.<sup>4</sup>

This article explores what this heightened attention means for dealmakers and M&A counsel in the energy and data center sectors.

# II. HISTORICAL DOJ APPROACH TO POWER AND UTILITY MERGERS

Historically, DOJ has taken a deferential approach to mergers involving electric utilities and power generation. Electricity markets are subject to extensive federal and state regulatory oversight, including by the Federal Energy Regulatory Commission (FERC), state public utility commissions, and independent system operators such as PJM Interconnection and the Electric Reliability Council of Texas (ERCOT). Given this layered regulatory structure, DOJ has historically intervened in electricity mergers a limited number of times.

Indeed, prior to its recent action in the *Constellation/Calpine* matter, it had been nearly 15 years since DOJ sought and obtained divestitures in this space. In the 2011 *Exelon/Constellation* case, DOJ analyzed transmission constraints within PJM to define narrow geographic markets and required divestitures to preserve competition. Outside of *Exelon/Constellation* and a handful of similar cases, remedial conditions on electricity mergers more often came from FERC and state regulators than from DOJ.

FERC and state regulators possess broader statutory mandates than DOJ in the utility and power sectors. FERC’s review of electricity mergers focuses on whether a transaction is consistent with the public interest, including effects on competition, rates, and regulation. State public utility commissions, such as the Public Utility Commission of Texas and the New York Public Service Commission, also review transactions involving utilities operating in their jurisdictions. These regulators apply different standards of review—though with some overlap—and have historically been key gatekeepers for electricity M&A.

# III. KEY TAKEAWAYS FROM DOJ’S NEW POLICY

Former AAG Slater’s February 2026 op-ed outlined the Division’s evolving approach to electricity markets. Despite her departure, her op-ed, together with the *Constellation/Calpine* complaint and competitive impact statement, remains the most detailed public statement of the Division’s analytical framework for evaluating transactions in electricity (and, by extension, data center) markets and continues to be an instructive guide for practitioners.

<sup>2</sup> Abigail Slater, *Competition Powers Growth and Affordable Electricity*, Reg. Rev. (Feb. 2, 2026), <https://www.theregreview.org/2026/02/02/slater-competition-powers-growth-and-affordable-electricity/>.

<sup>3</sup> Exec. Order No. 14,318, 90 Fed. Reg. 35385 (July 23, 2025); *Winning the Race: America’s AI Action Plan*, White House (July 2025), <https://www.whitehouse.gov/wp-content/uploads/2025/07/Americas-AI-Action-Plan.pdf>.

<sup>4</sup> See Omeed A. Assefi, *It’s Not Personal Sonny, It’s Strictly Business: Aggressive Enforcement to Protect a Free Market*, U.S. Dep’t of Just. (Mar. 23, 2026), <https://www.justice.gov/opa/speech/its-not-personal-sonny-its-strictly-business-aggressive-enforcement-protect-free-market>.

First, Ms. Slater stated that monitoring consolidation in electricity markets is a DOJ enforcement priority. She characterized electricity prices as a pocketbook issue for working Americans and emphasized that effective antitrust enforcement is needed to preserve competition and protect consumers from “unlawful consolidation and anticompetitive practices.”<sup>5</sup>

Second, the Division’s analysis would be forward-looking and market-based. Enforcement decisions, she explained, must be grounded in careful analysis of current competitive conditions while remaining sensitive to how markets—and regulatory barriers—are likely to evolve.<sup>6</sup> She flagged artificial intelligence and industrial reshoring, in particular, as forces reshaping electricity demand in ways that were difficult to forecast even a few years ago.<sup>7</sup> As artificial intelligence demand and manufacturing reshoring place growing pressure on the grid, the adequacy and competitive structure of power generation have become central concerns for antitrust review.

Third, she took a measured view of vertical transactions in the electricity sector. The op-ed acknowledged that vertical relationships—including deals by technology companies to secure reliable electricity for data center operations—are not inherently problematic and can “support new investment, improve reliability, and accelerate the development of much-needed generation capacity.”<sup>8</sup> At the same time, she made clear that the Division will scrutinize transactions that raise a “substantial risk of foreclosing competition, raising rivals’ costs, or undermining market access” to the detriment of consumers.<sup>9</sup>

Fourth, she recognized that electricity competition does not exist in a regulatory vacuum. State and federal policies shape market structure. In fact, FERC and state regulations have historically been viewed as forces unique to the electricity sector that guard against anticompetitive harm. Ms. Slater cautioned, however, that policies constraining supply or disfavoring particular generation sources can amplify the anticompetitive risks of concentration.<sup>10</sup> Consistent with this view, the Division established an Anticompetitive Regulations Task Force in March 2025 that solicited public comment on laws and regulations creating barriers to competition, with the electric energy sector specifically identified for scrutiny.<sup>11</sup>

The explicit recognition that markets and regulatory barriers are “likely to evolve,”<sup>12</sup> combined with the creation of a task force aimed at supply-side regulatory distortions, reflects a posture that treats market shares and concentration as one input among many—and such metrics are not dispositive. Thus, transactions that do not appear to raise concerns based on market shares may nevertheless draw substantive scrutiny where the Division has articulated a discrete theory of competitive harm—as the *Constellation/Calpine* matter, discussed below, illustrates.

## IV. CONSTELLATION/CALPINE: A NEW DOJ ENFORCEMENT MODEL?

On December 5, 2025, the Antitrust Division, together with the Attorney General of Texas, filed a complaint and announced a proposed consent decree requiring the divestiture of six power plants to resolve antitrust concerns arising from Constellation Energy Corporation’s \$26.6 billion acquisition of Calpine Corporation.<sup>13</sup> This action marked the first time in 14 years that DOJ had sought structural relief in a merger involving electric generation assets.<sup>14</sup>

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5 Slater, *supra* note 2.

6 *Id.*

7 *Id.*

8 *Id.*

9 *Id.*

10 *Id.*

11 Press Release, U.S. Dep’t of Just., “Justice Department Launches Anticompetitive Regulations Task Force” (Mar. 27, 2025), <https://www.justice.gov/opa/pr/justice-department-launches-anticompetitive-regulations-task-force>.

12 Slater, *supra* note 2.

13 Press Release, U.S. Dep’t of Just., “Justice Department Requires Divestitures to Proceed with Constellation’s Proposed \$26.6 Billion Acquisition of Calpine” (Dec. 5, 2025), <https://www.justice.gov/opa/pr/justice-department-requires-divestitures-proceed-constellations-proposed-266-billion>.

14 *Id.* (the most recent prior matter was Competitive Impact Statement, *United States v. Exelon Corp. & Constellation Energy Grp.*, No. 11-cv-2276 (D.D.C. Dec. 21, 2011)).

## A. Summary of Complaint

The complaint alleged that the acquisition would create the largest wholesale power generator in the United States by combining Constellation's and Calpine's fleets within both ERCOT and PJM, giving the combined firm enhanced opportunities to engage in anticompetitive conduct.<sup>15</sup> The core theory was a portfolio-based withholding concern: the combined firm, DOJ alleged, would have both the ability and the incentive to withhold output from one or more plants—by, for example, submitting high offers in capacity or energy auctions—forcing grid operators to dispatch higher-cost units and raising clearing prices.<sup>16</sup> Because Constellation's low-cost baseload plants (notably its nuclear fleet) earn inframarginal profits on every megawatt-hour sold, the resulting windfall on those units, the Division claimed, would more than offset any revenues foregone from withholding elsewhere.<sup>17</sup> Calpine's flexible gas-fired fleet, which allegedly can be ramped up and down relatively easily, was said to make this strategy more valuable and easier to execute.<sup>18</sup>

The Division built its case not on structural presumptions tied to market shares or HHIs, but on the complementary mix of generation assets the combined firm would hold and the dispatch-level incentives that mix would create. The approach is not entirely new: DOJ has long used a “fuel curve” or “ability and incentive” framework in RTO/ISO matters, examining how a combined firm's portfolio of baseload, mid-merit, and peaking units affects its incentive to withhold higher-cost output in order to capture inframarginal gains on its lower-cost fleet. This framework was used to justify the divestiture packages in the abandoned *Exelon/PSEG* matter (2006) and the consummated *Exelon/Constellation* matter (2011).

What is notable about *Constellation/Calpine* is the Division's willingness to deploy this framework at materially lower combined market shares and to explicitly focus on “portfolio-effects” rather than a concentration-based Section 7 horizontal overlap analysis. Portfolio-effects theories have a longer history in European merger review; the portfolio effects theory used in *Constellation/Calpine* is more novel in the U.S., but might well be invoked in future mergers involving power generation or, by extension, interconnection and data center infrastructure assets.

Notably, DOJ's complaint centered on the strategic composition of the combined assets rather than the parties' overall market share. The combined firm would hold only about 12 percent of ERCOT capacity—well below the 30 percent share threshold (paired with a 100-point HHI increase) used in the 2023 Merger Guidelines' structural presumption.<sup>19</sup> DOJ projected that the transaction would likely increase energy costs by more than \$100 million per year for consumers and businesses.<sup>20</sup> It also took a localized approach to geographic market definition, treating transmission constraints as capable of subdividing regional markets into narrower *pocket* markets—identifying “PJM Coastal Mid-Atlantic” as a distinct market, while treating ERCOT as a single geographic market owing to its electrical isolation from other grids.<sup>21</sup>

The merged entity's low share warrants attention in its own right. For practitioners, this reinforces that low market shares are not a guarantee that DOJ will not scrutinize transactions involving electricity and related assets, such as transmission and datacenters.

## B. Remedy

The consent decree required structural relief only: divestiture of six power plants—four in PJM and two in ERCOT.<sup>22</sup> The Division declined to accept behavioral remedies, such as caps on generators' offers in the energy market, that have sometimes been used in comparable matters.

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15 Complaint at 1-2, *United States v. Constellation Energy Corp.*, No. 25-cv-4235 (D.D.C. Dec. 5, 2025).

16 *Id.* ¶¶ 39, 41–42.

17 *Id.* ¶ 43.

18 *Id.* ¶¶ 38, 41.

19 *Id.*, ¶ 38; see U.S. Dep't of Just. & Fed. Trade Comm'n, Merger Guidelines § 2.1 (2023).

20 Complaint, *supra* note 12, at 2, ¶ 40.

21 *Id.*, ¶¶ 31, 33–35.

22 Press Release, U.S. Dep't of Just., *supra* note 13.

### C. Divergence from FERC and State Regulators

Notably, the DOJ's remedy went meaningfully further than what sector regulators required.<sup>23</sup> FERC, which regulated only the PJM portion of the transaction, had conditioned its July 2025 approval on divestiture of four PJM plants; DOJ accepted those four PJM divestitures and required an additional two divestitures in ERCOT—an area wholly outside FERC's merger jurisdiction.<sup>24</sup> The Public Utility Commission of Texas had approved the merger without any divestitures, reasoning that the parties would control only about 12.8 percent of installed ERCOT capacity (the 12 percent figure cited by DOJ reflects the use of different denominators)—below the state's 20 percent screen under PURA § 39.154.<sup>25</sup> The New York Public Service Commission likewise cleared the transaction without divestitures.<sup>26</sup> FERC was willing to accept behavioral remedies in the form of offer caps, but DOJ insisted on structural relief alone.<sup>27</sup>

The implications for merger analysis in the electricity sector are significant. Clearance by FERC or a state public utility commission (even with remedies) may not resolve federal antitrust concerns. Timelines, efforts obligations, outside dates, divestiture caps, and antitrust risk allocation should be calibrated to the possibility that the Division will seek more extensive or distinct remedies in appropriate cases.

## V. KEY TAKEAWAYS FOR DEALMAKERS

Given the developments described above, parties contemplating transactions in the power, utility, and data center sectors should consider the following:

### 1. Expect Heightened DOJ Scrutiny of Power, Utility, and Data Center Transactions

The DOJ can be expected to take a longer look at power and utility transactions than in the past, due to the political attention on electricity prices and the role of major technology companies in driving demand growth.<sup>28</sup> Transactions that might previously have proceeded with minimal federal antitrust review may now face extended investigation timelines and more searching analysis, including transactions to invest in or construct data centers that include power arrangements (such as PPAs) linked to generation assets.

As data center demand grows, antitrust review may increasingly treat power, interconnection, and certain grid-constrained inputs as strategic inputs ripe for foreclosure concerns rather than ordinary commercial arrangements. While DOJ leadership has emphasized that vertical relationships are not inherently problematic—and can support investment and reliability—parties may see questions where a transaction or bundled arrangement could be characterized (fairly or not) as reallocating scarce inputs rather than expanding supply. In that environment, the ability to document *additionality*—incremental generation, accelerated interconnection upgrades, improved reliability, or expanded capacity—can be especially important.

### 2. Prepare to Address Multiple Theories of Harm

DOJ appears to be considering traditional horizontal overlaps as well as vertical foreclosure theories and impacts on electricity prices for residential consumers.<sup>29</sup> The *Constellation/Calpine* case demonstrates the agency's willingness to pursue theories based on the strategic mix of a company's power plants and strategic withholding, even where traditional market share metrics fall well below the Guidelines' structural thresh-

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23 Compare Final Judgment, *supra* note 14, with Order Conditionally Authorizing Merger and Disposition of Jurisdictional Facilities, *Constellation Energy Corp.*, No. EC25-43-000, 192 FERC ¶ 61,074 (July 23, 2025).

24 Order Conditionally Authorizing Merger, *Constellation Energy Corp.*, *supra* note 23; see Competitive Impact Statement at 16, *United States v. Constellation Energy Corp.*, No. 25-cv-4235 (D.D.C. Dec. 12, 2025).

25 Order, Joint Application of Constellation Energy Corp. & Calpine Corp., No. 57684 (Tex. Pub. Util. Comm'n June 5, 2025), No. 16.

26 Declaratory Ruling on Merger, Joint Petition of Constellation Energy Corp. & Calpine Corp., No. 25-00266 (N.Y. Pub. Serv. Comm'n June 13, 2025), No. 5.

27 Compare Order Conditionally Authorizing Merger, *Constellation Energy Corp.*, *supra* note 23 (offer-cap conditions accepted by FERC), with Final Judgment, *supra* note 14 (structural divestitures only).

28 Edith Hancock, *Data-Center Power Use to Become Major Antitrust Issue*, Wall St. J. (Oct. 21, 2025), <https://www.wsj.com/tech/ai/data-center-power-use-to-become-major-antitrust-issue-45ac272e> (quoting former AAG Jonathan Kanter: "Looking ahead, energy, power is going to be an extremely important area of focus for antitrust enforcers.").

29 Slater, *supra* note 2.

olds.<sup>30</sup> Companies with diverse generation assets—including combinations of baseload nuclear or renewable capacity with mid-merit or peaking gas-fired capacity—should expect closer scrutiny.

Parties should therefore expect three analytical lenses to recur in Division reviews.

First, wholesale market mechanics and portfolio incentives: in auction-cleared markets, agencies may examine unit-level roles (marginal versus inframarginal generation), operational flexibility, dispatch patterns, and congestion exposure alongside traditional market shares, on the theory that a broader or more complementary fleet can alter incentives during constrained conditions. Parties can respond by marshalling empirical dispatch and bidding evidence, and by highlighting the safeguards and practical constraints that discipline wholesale power markets—operational limits, outage risk, hedging and long-term contracting, and the active role of independent market monitors (including the PJM Independent Market Monitor and ERCOT’s Independent Market Monitor) in detecting and referring economic and physical withholding, together with FERC and state regulatory mitigation tools such as must-offer obligations, offer caps, and unit-specific mitigation. The empirical literature on physical and economic withholding in U.S. wholesale markets provides a further evidentiary baseline against which any merger-specific withholding concern should be tested.

Second, “price-setting” capacity as a screening lens. Enforcers may probe whether a transaction increases the combined firm’s position in resources likely to be marginal during key hours or at key locations—flexible gas-fired units, for instance. Parties can often rebut such concerns by showing that clearing prices are driven by a constellation of factors (load shape, fuel markets, renewables output, transmission constraints, storage, and demand response) and that monitoring, mitigation, contracting, and competitive supply all constrain any ability or incentive to move price. Price-setting capacity is a useful screening lens, but it should not be used as a freestanding metric of competitive harm.

Third, constraint-defined geographies, or *pocket* markets. Even within a regional footprint, transmission constraints can create hours or areas in which competitive conditions are more localized. A fact-driven congestion and deliverability analysis—how often constraints bind, under what conditions, and whether the merger actually changes outcomes during those periods—will often be central to both advocacy and remedy design.

At the same time, the Division’s increased enforcement appetite carries trade-offs that practitioners should foreground in advocacy. Aggressive intervention in capacity-constrained electricity markets risks deterring procompetitive transactions and slowing capacity additions at a moment of rapidly rising demand from data center buildout and industrial reshoring—outcomes that could ultimately raise the very prices the Division seeks to protect. Former AAG Slater herself acknowledged that vertical and horizontal transactions in this space “can support new investment, improve reliability, and accelerate the development of much-needed generation capacity.”<sup>31</sup>

Counsel for transacting parties should therefore be prepared to develop transaction-specific evidence of efficiencies, incremental capacity, accelerated interconnection upgrades, and reliability gains, and to articulate clearly why the procompetitive case outweighs the foreclosure or withholding concerns the Division may identify.

### ***3. Navigate Evolving Market Definition Questions in Data Center Transactions***

Market definition is likely to be a threshold battleground in any antitrust review of data center transactions. No federal court or agency has published a definitive market definition for data center services, and the analytical framework remains unsettled across product, geographic, and functional dimensions. Parties should anticipate that enforcers may advance narrower market definitions that increase measured concentration, and should be prepared to present well-supported arguments for the market definitions that most accurately reflect competitive conditions.

**Product market definition.** The data center industry encompasses retail, wholesale, and build-to-suit/hyperscale segments. Enforcers could argue that these segments constitute separate relevant markets with distinct customers and limited demand-side substitutability; transacting parties may counter with evidence of supply-side flexibility and competitive overlap among operators serving multiple tiers. The emergence of AI-ready data center facilities—which require power densities higher than traditional data center deployments—raises a further open question: whether AI-capable infrastructure constitutes a distinct market or falls along a continuum of data center services. The answer may depend on whether, in a given transaction, the evidence supports treating AI-capable capacity as functionally non-substitutable or as one end of a broad

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<sup>30</sup> Complaint, *supra* note 12, ¶¶ 37–44.

<sup>31</sup> See Slater, *supra* note 2.

and evolving competitive spectrum. Parties should develop evidence on both sides of this question and be prepared to advocate for the market definition best supported by the specific facts of their transaction.

**Geographic market definition.** Geographic market definition is similarly contested. On one hand, latency requirements, cross-connect dependencies, and localized power grid constraints could support narrow, metro-level definitions—particularly in supply-constrained corridors such as Northern Virginia, Dallas–Fort Worth, and Phoenix. On the other hand, certain workloads (including large-scale AI training) are less latency-sensitive to end users and can be sited flexibly across regions with adequate power, supporting broader market definitions. The *Constellation/Calpine* complaint’s use of RTO/ISO boundaries as geographic market proxies could provide a useful construct for data center analysis, but whether that approach is appropriate will depend on the specific workload characteristics, customer substitution patterns, and supply conditions at issue in a given transaction. Additionally, some have argued that the inclusion or exclusion of hyperscaler self-supply capacity in market share calculations could significantly affect concentration metrics—a methodological question that remains unresolved and will be fact-intensive.

**Practical implications.** The absence of established precedent means that the party that most persuasively frames market definition in the first contested data center enforcement action will likely shape the analytical template for a generation of transactions. Given the stakes, deal teams should proactively develop factual records and economic analyses that address market definition across all relevant dimensions—and should avoid prematurely locking in a particular market boundary. The goal is to ensure that counsel has the evidentiary foundation to advocate effectively for whichever definition is most supportive of the transaction and facts under review.

A related and often overlooked consideration: the Division is likely to look past contractual labels to economic substance. A power purchase agreement, co-location arrangement, or behind-the-meter structure styled as an ordinary commercial offtake may nonetheless be analyzed as vertical integration where the contracting parties exert meaningful joint control over dispatch, capacity allocation, or pricing. Deal documents—and the internal business documents that accompany them—should be drafted with that substance-over-form lens in mind, and counsel should ensure that the commercial rationale for any such arrangement is well-documented and consistent across the deal record.

#### 4. Engage Antitrust Counsel Early

Clients and M&A counsel in power, utility, and data center transactions should gather relevant documents and engage with antitrust counsel early to assess the likelihood of a Division investigation or government intervention. Such engagement may require more time and effort than in the past, particularly given the potential for DOJ to diverge from conclusions reached by FERC and state commissions.<sup>32</sup> Parties should be prepared for the possibility that antitrust review will require divestitures or other remedies beyond what sector-specific regulators require. Given the volume of transactions in this space and the current political environment, this is a development that dealmakers and M&A counsel should take seriously.

Early engagement should also extend to the drafting table. Merger agreements in power, utility, and data center transactions should be stress-tested for antitrust risk allocation against a scenario in which the Division takes an independent view of competitive harm on a longer timeline than sector regulators. That stress test typically touches efforts standards (hell-or-high-water versus commercially reasonable efforts), specific divestiture obligations and caps, outside-date length and extension mechanics, antitrust reverse termination fees, conduct-of-business covenants during the gap period, and coordination protocols for parallel FERC, state PUC, and DOJ engagement.

## VI. CONCLUSION AND OUTLOOK

The *Constellation/Calpine* consent decree, read together with AAG Slater’s op-ed and the Administration’s emphasis on data center buildout, marks a meaningful recalibration of the Division’s engagement with electricity markets and the infrastructure markets they support. Three features of that recalibration might well endure. First, the Division is prepared to ground its merger cases in portfolio and dispatch-level theories of harm rather than structural presumptions alone. Second, modest-share challenges are not hypothetical: a roughly 12 percent combined share of ERCOT capacity produced a structural remedy. Third, sector-regulator clearance may diverge meaningfully both in scope (ERCOT divestitures beyond FERC’s reach) and in form (structural relief where FERC accepted behavioral remedies).

Leadership transitions at the Division aside, electricity affordability is a bipartisan “kitchen table” issue, and data center buildout has been designated a national priority. For dealmakers in power generation, utilities, and digital infrastructure, the practical implications are concrete: longer investigation timelines, broader document collection, more contested theories of harm, a higher likelihood of divergence between sector-regulator and antitrust outcomes, and a corresponding need to allocate antitrust risk more carefully in deal documents.

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<sup>32</sup> See *supra* notes 23–27 and accompanying text.

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