

How Energy Sector Volatility Is Reshaping D&O Risk

Geopolitical shocks, federal policy whiplash and surging demand from data centers are accelerating exposures for directors and officers in the energy sector. Choosing the right risk transfer partner should be top of mind for many.

By: [Berkshire Hathaway Specialty Insurance](#) | July 2026

The energy sector has rarely faced a more dynamic stretch. In just the past five to six years, oil prices went negative during COVID, the Russia-Ukraine war elevated global energy prices and instability in Venezuela portended major changes to that country's oil output.

Then a blockade of the Strait of Hormuz sent commodity prices soaring within weeks. Layer on top of that an unprecedented buildout of AI-driven data centers and the race to power them, and what used to be considered "shock" events now look more like the baseline.



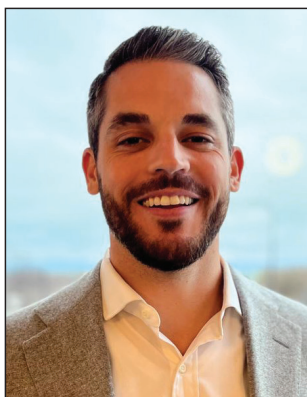
"Geopolitical and regulatory shocks are the base case going forward," said Dan Sanford, Vice President, Energy Practice Leader – Executive and Professional Lines at Berkshire Hathaway Specialty Insurance (BHSI).

"They've always been there, but the frequency has accelerated."

For directors and officers across exploration and production, oilfield services, midstream, downstream, utilities, renewables and emerging technologies like modular nuclear reactors, that volatility translates directly into heightened litigation risk.

A Sector Transformed by War, AI and Capital

The traditional commodity-exposed side of energy continues to wrestle with pricing it cannot control. "Even



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the best, most sophisticated operators in any part of the energy sector that are exposed to commodities are price takers, not price setters,” Sanford said. “You cannot allocate capital long term based on any sort of pricing thesis of elevated pricing.”

That tension is on full display today. With West Texas Intermediate Crude trading at elevated levels, public exploration and production companies are being pushed to grow even as shareholders demand continued capital discipline. New production takes six-plus months to bring online, takeaway constraints in basins like the Permian limit how much oil can be produced and no one knows where prices will land by the time that petroleum hits the market.

“What really matters at the end of the day is how these companies, their executives, and their boards executed compared to what they promised along the way,” Sanford said.

For as we know, when companies fail to back up their promises, shareholder litigation may soon follow.

Meanwhile, the power generation and transmission side of the sector has been transformed almost overnight. Utilities, solar and wind developers, and more recent entrants like geothermal or modular nuclear startups that once operated on long-term investment horizons are now racing to compete for the massive demand crunch driven by AI hyperscalers and industrial users.

“Funding is everywhere now,” Sanford said. “It seems to just be a race to get power generation contracted and established as quickly as possible.”

Federal policy has added another layer of complexity over the past 5 years. Tax subsidy programs that historically covered 20% to 30% of project costs jumped to 50% under the Inflation Reduction Acts, with a heavy tilt toward solar and wind.

Recent legislation has reversed course, requiring qualifying projects to be initiated by July 5, 2026, or completed by December 31, 2027, to receive credits.

“From a D&O and shareholder litigation standpoint, this represents a significant risk because everyone is scrambling to meet those deadlines,” Sanford said. “The outcome is binary. You either get the tax credit or you don’t.” Add utility interconnection backlogs for front-of-the-meter projects, and the runway to deliver shrinks even further.

BHSI has already seen claims tied to tax subsidies and the accounting behind whether projects ultimately qualified. “It’s challenging to have full confidence that all the subsidies and credits promised to shareholders

will actually be realized,” Sanford said.

Best Practices for D&O Risk Mitigation

In an environment where shareholder litigation is more material and more expensive than ever, Sanford emphasized that even strong, well-managed companies get sued. The goal is to make the defense as strong as possible.

“We think a measured approach where thoughtful documentation is key makes companies more defensible for any future litigation,” Sanford said. He pointed to several priorities:

Be thoughtful about disclosure. Materiality always matters, but claims have arisen from both disclosing too much and disclosing too little. Guidance, 10-Ks, 10-Qs and interim communications all warrant careful review.

Use third-party advisors – and document appropriately. Engaging law firms, consultants and industry specialists is valuable, but the proper documentation of what companies did with that advice is critical in improving a legal defense.

Right-size your limits. Capacity in the market is not the issue; pricing and adequacy are. Valuations for both private and public energy and energy-adjacent companies have multiplied rapidly, and settlement damages are calculated as a percentage of shareholder value lost.

“As market caps increase, so do the potential amounts for settlement damages, which means companies should be purchasing higher limits,” Sanford said. “There are a lot of companies not buying adequate limits based on where their market cap has gone because it’s happened so fast.”

He credited brokers with industry specialization, particularly those who pair strong energy and technology practices, for helping customers understand and address that need as the two sectors increasingly converge.

A Risk Transfer Partner Built for This Moment

BHSI has leaned into industry specialization as the energy and technology sectors blur together. Sanford and his team work in lockstep with their technology industry counterparts as well as with a dedicated energy claims specialist, ensuring that historical knowledge of energy-specific claims informs every customer conversation.

“Claims is our product. We are in the business of paying claims,” Sanford said. Underwriters are notified and involved throughout the claim process, and claims professionals attend customer meetings, dinners and industry events alongside underwriters.

To help customers stay ahead of emerging exposures, BHSI offers a preferred counsel endorsement that gives primary D&O and Side A customers four hours of annual consultation time with partners at a select group of preeminent securities defense law firms. Topics can range from shareholder derivative claim primers and indemnification provisions to D&O defense strategy and considerations around redomiciling from Delaware to states like Texas.

“That time is theirs,” Sanford said. “We think that makes our customers a better D&O risk, and improved corporate governance will benefit them outside of the D&O context as well.”

BHSI also hosts regionalized events that bring these law firm partners together with general counsels, risk professionals and finance leaders to provide their thought leadership on a range of current developments. And for smaller, rapidly scaling private energy companies – particularly tech-enabled ones – BHSI has built a roadmap designed to provide steady pricing, limits and retention paths from early funding rounds through IPO.

“There is now a much greater pipeline of developmental stage energy companies, and we’re seeing and expect to continue to see an increased pace of IPOs and consolidation,” Sanford said. “Things are moving much faster in this space.”

Looking Ahead

With the July 2026 and December 2027 tax credit deadlines looming, M&A consolidation accelerating, and contract risk growing around front-of-the-meter and behind-the-meter power generation, directors and officers in the energy sector have more to navigate than ever.

“It’s critical to recognize that we’re operating in a very volatile environment,” Sanford said. “Cross your t’s and dot your i’s. Be educated and maintain appropriate documentation. Stay in touch with your carrier and broker, and take advantage of any legal help you can access right now.”

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