

**ARTICLE**

## **Data Center Legal Risks: The Energy, Environmental, and Insurance Challenges**

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Nearly every time a lawyer uses an artificial intelligence research tool, a business conducts a transaction, or a consumer asks a chatbot a question, that request travels to a data center. Data centers are large warehouses filled with computer servers and the power and cooling systems that keep them running—the physical infrastructure that makes the internet, cloud computing, and artificial intelligence work. Data centers are not new, but the scale of demand for them is. It is driven primarily by the rapid growth of artificial intelligence applications that require vastly more computing power than conventional digital services.

According to a 2024 report by Lawrence Berkeley National Laboratory prepared for the U.S. Department of Energy, U.S. data center electricity consumption has been increasing since 2014, with a compound annual growth rate of approximately 7 percent from 2014 to 2018 that increased to 18 percent between 2018 and 2023. Electricity consumption is projected to grow in the range of 13 percent to 27 percent between 2023 and 2028. [2024 United States Data Center Energy Usage Report](#), at 7 (DOE Report). U.S. data center electricity consumption reached 176 terawatt-hours (TWh) in 2023, representing 4.4 percent of total U.S. electricity consumption that year, up from approximately 60 TWh from 2014-2016. The report projects it could reach 325 to 580 TWh by 2028, which could translate to a total power demand for data centers between 74 and 132 GW—representing 6.7 percent to 12.0 percent of total U.S. electricity consumption forecast for 2028. *DOE Report* at 6. The U.S. Energy Information Administration has separately projected that energy consumption from data centers and other commercial computing uses will grow faster than any other category of commercial energy consumption, outpacing lighting, space cooling, and ventilation by 2050. EIA, [Electricity use for commercial computing could surpass space cooling, ventilation](#). And the North American Electric Reliability Corporation's most recent Long-Term Reliability Assessment finds that data centers account for most of the projected increase in North American electricity demand over the next 10 years. North Am. Reliability Corp., [Long-Term Reliability Assessment](#), at 9.

The water footprint of data centers is equally significant. Lawrence Berkeley National Laboratory estimates that U.S. data centers directly consumed approximately 66 billion liters of water in 2023 through cooling operations, with hyperscale and colocation facilities accounting for 84 percent of that total. *DOE Report* at 55. Hyperscale data centers alone are projected to consume between 60 and 124 billion liters annually by 2028. This does not include indirect water consumption and greenhouse gas emissions associated with electricity use—estimated at nearly 800 billion liters of water and 61 billion kilograms of CO<sub>2</sub> equivalent in 2023—which vary based on the regional electricity grid mix supplying power to each facility. *DOE Report* at 56-58.

The Trump Administration has responded to this increasing demand through Executive Order 14318, signed July 23, 2025, which declares it a priority to facilitate the rapid and efficient buildout of data centers and the infrastructure that powers them by easing federal regulatory

burdens and utilizing federally owned land and resources. [Exec. Order No. 14,318](#), 90 Fed. Reg. 35,385 (July 28, 2025). At the state level, legislators have introduced a wide variety of measures addressing data center energy pricing, ratepayer protection, water use, and environmental impact. The increasing demand for data centers—and associated energy and environmental footprint—presents unique legal considerations for counsel involved in their development and operation. This article covers two categories of legal risks—energy-related risks and environmental risks—and concludes with insurance coverage considerations.

## Energy-Related Legal Risks

A growing risk factor for data centers is electricity supply. Data center growth is vastly outpacing the ability of our energy grid to support that growth. S&P Global, for instance, noted that for the first time in decades, the expansion of large-scale electricity consumers will be limited by grid power availability and deliverability. S&P Global, [Navigating the US Data Center Power Crunch: On-Site Solutions Offer a Faster Path to Power](#). The North American Electric Reliability Corporation has found that the size and speed of data center expansion across the nation presents a “significant near-term reliability challenge,” particularly considering that data centers can be developed faster than the energy infrastructure—generation and transmission—needed to support these facilities. North Am. Reliability Corp., [2025 State of Reliability](#), at 1.

Data centers are increasingly the target of state legislative and regulatory actions, largely driven by concerns over the voracious energy consumption needs of data centers and their potential cost affects retail ratepayers. A bipartisan majority of Maine’s legislature recently passed a bill for the first state-wide moratorium on new data centers, though the governor vetoed it. Eleven other states are considering similar legislation.

Several states also have begun approving rules aimed at relieving rate pressure on retail customers from the entry of data center customers. These rules include the creation of special rate classes that impose a higher share of electricity costs on data centers, minimum contract terms and substantial exit fees if the data center customer terminates service early, and collateral and creditworthiness requirements to ensure that data centers are able to cover their share of costs. For example, the Kansas Corporation Commission recently approved a large load tariff that requires large load customers (above 75 megawatts) to pay a minimum monthly bill of 80 percent of their contracted demand, even if their actual monthly power usage is lower. [In re Application of Evergy Kansas Metro, Inc., Order Approving Unanimous Settlement Agreement, Docket No. 25-EKME-315-TAR, 2025 Kan. PUC LEXIS 1570, ¶¶ 4, 22 \(Kan. Corp. Comm’n Nov. 6, 2025\)](#). Large load customers also must commit to a five-year term of service, a 36-month notice period to terminate service; and an early-termination exit fee of the minimum monthly bill times the number of months remaining or 12 months, whichever is higher. Ohio regulators recently approved a similar large load tariff for new data centers larger than 25 megawatts, requiring them to pay for at least 85 percent of the energy they expect to need each month, even if they use less power. *See* Edison Elec. Institute, Letter to FERC, Docket No. RM26-4, at 12 (filed Mar. 12, 2026), [eLibrary | File List](#).

The federal government, too, is paying close attention to cost concerns. The Trump administration recently extracted a voluntary pledge from a group of technology companies that they would bear the cost of new electricity generation to power their data centers. The White House, [Ratepayer Protection Pledge Proclamation](#) (Mar. 4, 2026). The Federal Energy Regulatory Commission (FERC), for its part, has used its authority over transmission service and wholesale electricity rates to police the terms and conditions of transmission service to serve data center customers. FERC recently rejected a transmission service agreement based on concerns that it could improperly saddle other transmission customers with the costs to serve a data center customer. *See* 193 FERC ¶ 61,237 at P 18 (2025), [eLibrary | File List](#). And after the Department of Energy directed FERC to consider “potential reforms to ensure the timely and orderly interconnection of large loads,” including AI data centers, “to the transmission system,” FERC recently announced its intent to issue an order by June on the DOE Advanced Notice of Proposed Rulemaking “in a manner that is quick, efficient, and legally durable.” [DOE ANOPR letter; FERC to Act on Large Load Interconnection Docket by June 2026 | Federal Energy Regulatory Commission](#).

### **Environmental Legal Risks**

In many respects, the environmental legal risks associated with data center development mirror those arising in other large-scale industrial development projects. Counsel advising clients on data center development, acquisition, or operation will encounter familiar permitting obligations: preconstruction air quality permits under the Clean Air Act’s New Source Review program, discharge permits under the Clean Water Act, and CERCLA liability exposure in connection with site acquisitions, including acquisitions of former industrial properties. Environmental liability, permitting timelines, and related logistics can materially affect project schedules and should be evaluated early in development and in transactional due diligence.

There is some momentum at the federal level that may expedite the permitting timeline for projects with a federal nexus. For example, Executive Order 14318 directed federal agencies to identify existing NEPA categorical exclusions applicable to qualifying data center projects and tasked the Council on Environmental Quality (CEQ) with coordinating with relevant agencies on establishing new ones. On April 9, 2026, CEQ issued new guidance to federal agencies on categorical exclusions under NEPA—establishing the framework agencies may use to develop data center-specific categorical exclusions going forward. *See* [Memorandum from Katherine R. Scarlett, Chairman, Council on Env’tl. Quality, to Heads of Fed. Dep’ts and Agencies, Establishing, Revising, Adopting, and Applying Categorical Exclusions Under the National Environmental Policy Act \(Apr. 9, 2026\)](#). Executive Order 14318 further directed the Federal Permitting Improvement Steering Council to designate qualifying projects under the FAST-41 framework, which requires agencies to adhere to published permitting schedules.

These directives sit within a broader National Environmental Policy Act (NEPA) deregulatory context: following CEQ’s rescission of its NEPA-implementing regulations in early 2025, multiple federal agencies—including the Army Corps of Engineers, the Department of Energy,

and the Department of the Interior—have revised their own NEPA-implementing procedures, which may independently reduce environmental review burdens for data center projects.

Where data centers diverge most from conventional development is in a set of environmental risks—particularly around high water consumption—that are less commonly encountered in conventional development contexts. Consumptive water use is largely regulated at the state level. Data centers drawing from surface water or groundwater must comply with state water rights frameworks and permitting requirements, which vary significantly by jurisdiction and are increasingly the focus of state legislative activity.

In June 2025, for example, Minnesota enacted a law requiring the Minnesota Department of Natural Resources, before issuing water use permits to data centers with proposed consumptive use exceeding 100 million gallons per year, to ensure protection of public health and welfare, that technologies and measures promoting water conservation, the efficient use of water, and watershed health are reasonably considered, and that water use conflicts are addressed. [Minn. Stat. § 103G.271, subd. 5b \(2025\)](#). Minnesota’s approach is illustrative of a broader legislative trend: a growing number of states are actively considering measures targeting data center water use, such as mandatory disclosure and reporting requirements and closed-loop system mandates.

Given this evolving landscape, counsel should be engaged at the site selection stage—before a purchase or option agreement is executed—to assess water availability, applicable permitting requirements, and the feasibility of water conservation technologies. For transactional counsel specifically, water-related representations, warranties, and indemnities warrant close attention in data center acquisitions. Undisclosed water use obligations, pending regulatory proceedings, or unresolved conflicts with senior water rights holders can represent material liabilities that standard environmental due diligence frameworks—which are typically calibrated to contamination risk—may not fully capture.

### **Insurance Recovery Considerations**

Energy and environmental risks associated with data centers discussed above are on the rise given the fast growth of hyperscale data centers, but data centers are not a new phenomenon, and there is existing and emerging insurance coverage available for policyholders involved in the life cycle of a data center.

One of the most common risks policyholders in this space face is property loss and business interruption—it could be due to a vendor’s negligence resulting in a power surge, or it could be due to a breakdown of the data center’s HVAC system. Such losses are usually covered by first-party property insurance policies, which usually include recovery of loss of income during business interruption due to property loss in the data center. The following two cases illustrate how some courts have resolved insurance coverage disputes over such losses.

In one case, an Ohio data center hired a vendor for electrical services that caused an electrical surge, which in turn damaged the data center’s network and interrupted its services. The data center sued the insurer for business interruption coverage and the parties disputed about the

length of the business interruption covered under the policy. *Bluemile, Inc. v. Atlas Indus. Contractors, Ltd.*, 102 N.E.3d 579, 581 (Ohio Ct. App. 2017). Relying on “a reasonable construction of the document in conformity with the intention of the parties as gathered from the ordinary and commonly understood meaning of the language actually employed” and the general interpretation principle in insurance law to interpret ambiguity in favor of coverage, the Ohio Court of Appeals affirmed the trial court’s grant of summary judgment to the data center. *Id.* at 584-85, 588.

In another case, the air conditioning equipment at a hospital’s data center failed, causing overheating of various components of a specialized computer data storage network that was marketed to have a 99.999 percent reliability. The hospital sued the insurer after the insurer denied coverage under its “all risks” insurance policy. A key issue in the case was whether the damage to the components of the storage network constituted “direct physical loss or damage” under the policy. *Ashland Hosp. Corp. v. Affiliated FM Ins. Co.*, No. CIV.A. 11-16-DLB-EBA, 2013 WL 4400516, at \*4 (E.D. Ky. Aug. 14, 2013). The Eastern District of Kentucky held that because the overheating resulted in physical alteration to the components themselves (as opposed to a mere loss of data), it triggered coverage under the all-risks policy. Based on that holding, the federal court further held that losing the extremely high reliability of the storage network due to the overheating event constituted “direct physical loss or damage,” as that was what the parties intended to insure. *Id.* at \*5.

Another category of policies comes into play when the data center owner or other stakeholders are sued and want to recover attorneys’ fees and settlement/judgment payments. These policies usually include commercial general liability policies, directors and officers policies, and errors and omissions or professional liability policies. In 2026, we are seeing a rise in securities class actions against public companies who allegedly exaggerated their expected profitability based on their capability to provide various services and products in support of data centers. *See, e.g., Complaint, Dishion v. Power Solutions International, Inc.*, Case: 1:26-cv-03149, ECF No. 1 (N.D. Ill. March 20, 2026) (securities class action against Power Solutions, alleging misleading statements regarding the company’s “ability to capture sales demand for its power systems solutions, particularly within the data center market”). Companies facing such litigation risks should examine carefully their directors and officers policies in particular to ensure sufficient coverage and limits.

The insurance market is also developing or updating specialized products for data center stakeholders, including cybersecurity and data breach coverage, equipment breakdown coverage, builder’s risk insurance that covers risks associated with building data centers, marine cargo insurance that covers risks for transporting data center equipment, and environmental insurance covering potential pollution risks associated with data centers.

Policyholders in the life cycle of building, leasing, owning, and operating data centers should be aware of the evolving risks in this space and seek professional counseling on how to mitigate those risks, including energy and environmental risks, through insurance and other means.