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Managing Data Center Power Issues, Public Pushback

By **Randa Adra, Lily Geyer and Natasha Dahl** (August 11, 2026, 10:31 AM EDT)

If you are operating in the dynamic data center construction space, your team needs to be prepared to manage the technical and legal risks related to data center development.


Randa Adra

This is the second part of a two-part article examining the risks associated with data center construction, and strategies for mitigating them — both through proactive project controls and risk management planning, and through targeted contract drafting and dispute resolution mechanisms.

Part one of this article addressed the schedule, supply chain and labor risks that data center projects face — examining both the technical strategies and the contract tools available to manage them.


Lily Geyer

This part continues that integrated approach, turning to power availability, reliability and grid interconnection, government regulations and public opinion, and project controls, risk management planning and dispute management.

Managing Power, Regulatory and Dispute Risks: Technical Context and Legal Frameworks

Power Availability, Reliability and Grid Interconnection


Natasha Dahl

In its Long-Term Reliability Assessment published in January, the North American Electric Reliability Corporation, or NERC, stated that new data centers account for most of the forecast increase in electricity demand over the next 10 years.[1]

New data centers coming online increase energy demand. Thus, when there is a lack of availability or reliability in the power grid, projects may be affected.

To avoid delays to market and criticism of the energy required to operate, data center operators are beginning to opt for independent on-site power generation, such as natural gas turbines, as a temporary, or even permanent, solution.

In fact, Texas is directing its Public Utility Commission and the Electric Reliability Council of Texas to

require data centers to fund electrical infrastructure needs as well as ensure a reduction in ratepayers' costs.[2]

There have also been major shifts in nuclear power generation as a solution to data center power needs. Options include restarting recently retired large reactors and pursuing smaller modular reactors that could eventually be relocated as needed.[3]

In a high-profile example of the first trend, Constellation Energy Corp. signed a 20-year power purchase agreement with Microsoft Corp. intended to enable the restart of Three Mile Island Unit 1, renamed the Crane Clean Energy Center, with electricity production targeted by the end of 2027.[4]

In parallel, small modular reactors — generally defined as advanced reactors that produce 300 megawatts or less — are explicitly designed around modularity.[5] See, for example, the U.S. Nuclear Regulatory Commission's certification of NuScale's SMR design in 2023,[6] and Canada's 2025 construction license for Ontario Power Generation's BWRX-300 reactor at the Darlington New Nuclear Project.[7]

In May, NERC released a Level 3 Essential Action Alert outlining seven actions registered entities must implement to address immediate risks posed by computational loads.[8]

These essential actions impose heightened modeling, interconnection study, commissioning and coordination requirements on transmission owners, planners and grid operators that directly affect data center construction timelines.

As recently as June, the Federal Energy Regulatory Commission ordered regional grid operators to justify data center tariffs in an effort to speed up the process to interconnect the grid and data centers.[9]

For developers and contractors operating under compressed schedules, these requirements introduce additional sequencing constraints that must be accounted for in project planning.

Given these power availability risks, parties should consider including a power responsibility matrix in their contract, specifying who owns utility applications, interconnection studies, deposits, easements, off-site transmission scope, behind-the-meter generation procurement, fuel supply and emissions permitting.

Because data centers may require significant megawatts of power — and because NERC's 2026 Essential Action Alert now imposes additional requirements that may continue to evolve — interconnection timelines are increasingly uncertain and outside the parties' direct control.[10]

Accordingly, interconnection can be structured as a condition precedent to certain milestones or full notice to proceed, with defined suspension and termination economics if interconnection is not achieved by a stated date.

Where interconnection is an owner responsibility, contractors may want to seek contractual protections against the cost consequences of owner-side delays in securing interconnection, including extended general conditions compensation, escalation adjustments for materials and labor, demobilization and remobilization reimbursement, and the right to an equitable schedule adjustment without exposure to liquidated damages for the affected period.

Where on-site generation is contemplated, interim power language may address permitting, equipment ownership, emissions compliance and operational grid-readiness.

The essential nature of securing sufficient power for data center projects warrants contracting at the outset in greater specificity for obligations and risks unique to data centers.

From the supplier's perspective, manufacturers of critical interconnection equipment — including transformers, switchgear and generators — may benefit from carefully defining the scope of their commissioning support and grid-readiness warranty obligations.

Supply agreements can specify whether the supplier's performance guarantees are contingent upon grid conditions or utility-side readiness, and can delineate the supplier's exposure where commissioning is delayed due to interconnection timelines outside its control — including compensation for extended storage, preservation maintenance and retesting requirements.

Government Regulations and Public Opinion

Today, data centers are facing new challenges in the regulatory space that may extend project timelines.[11] State laws on this subject are in flux and affecting projects in real time, especially site locations.

For example, in April, the Maine Legislature passed a moratorium for the construction of data centers that was subsequently **vetoed** by the governor.[12] And on July 14, New York implemented a one-year data center moratorium.[13]

Meanwhile, various county and city jurisdictions have proposed or passed data center construction bans or moratoriums.[14] This has resulted in extended project timelines as developers search for other sites.

In addition to government regulations, another major hurdle is public opposition to the development of data centers. For example, community pushback has already caused Amazon Web Services and Compass Datacenters to cancel major data center construction in Virginia.

To mitigate these risks, developers should conduct thorough regulatory and political risk assessments during site selection and engage local communities early — addressing concerns around energy consumption, water usage and noise — to build local public support before opposition materializes.[15]

Contract strategies to manage this risk include structuring permitting as a condition precedent through a phased notice-to-proceed framework that distinguishes limited early work from full mobilization, with prenegotiated suspension and termination economics in case of significant changes in the legal landscape.

Change-in-law clauses should be broad enough to encompass zoning and land use ordinances, environmental and noise regulations, agency interpretations, executive orders, and tariffs — each of which can materially alter data center project viability.

Parties may also consider communications protocols governing public engagement and information disclosure, given the increasing scrutiny data center developments face from local communities.

Project Controls, Risk Management Plans and Dispute Management That Fits Data Centers

Project controls and risk management planning are essential components of any construction program, but they are particularly critical in data center development, where there is an unusually dense concentration of interdependent risks as described throughout this two-part article — including compressed schedules, long-lead equipment, evolving power interconnection requirements and shifting regulatory landscapes.

A robust project controls program enables real-time monitoring of schedule and cost performance, allowing project teams to identify critical-path deviations early.

Similarly, a dedicated risk management plan should be developed at the outset and actively maintained throughout the project lifecycle, cataloging risks specific to data center construction — including supply chain volatility, power availability, regulatory changes and community opposition — and establishing mitigation strategies, trigger points and contingency allowances for each.

In the face of a potential dispute, parties are best positioned when systems are implemented with an aim toward mitigating disputes long before they arise.

Parties that maintain a baseline schedule with regular updates, procurement logs, daily reports, documentation of external and force majeure events, and a clean change-order register will be far better positioned when disputes occur — and more likely to resolve them without resorting to extensive and expensive legal proceedings.

Nonetheless, data center stakeholders, like all parties to construction contracts, must anticipate the potential for disputes at the contracting stage, and include in their agreements a tailored dispute resolution clause that aligns with their unique priorities.

Available mechanisms — including executive negotiations, standing or ad hoc dispute boards, mediation and binding arbitration — each offer distinct advantages and limitations, and parties should evaluate which combination and sequence best align with their risk profile and project-specific priorities.

In making this decision, parties must primarily consider the importance of confidentiality and the preservation of their commercial relationship. Assuming the parties include an arbitration clause, key factors to consider when designing the provision include the parties' desire for speedy resolution, whether arbitrators must have subject matter expertise, and cost allocation.

Data center development presents unique opportunities and challenges to parties and their counsel. While there is a steep learning curve, parties that take the appropriate steps will improve their chances of success in this booming industry.

By combining proactive project controls and risk management planning with precisely tailored contract provisions and dispute resolution mechanisms, stakeholders can better navigate the technical complexities and legal uncertainties that define this rapidly evolving sector.

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