

Litigators build toolkit to fight AI data centers

BY NIINA H. FARAH | 12/01/2025 07:25 AM EST



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ENERGYWIRE | Critics of data centers that power artificial intelligence are writing a playbook for challenging the energy-hungry facilities in court.

So far, opposition to data centers is largely taking place outside the courtroom. But critics are eyeing potential legal challenges over encroachment on state powers and disturbances to vulnerable species.

Already, lawsuits are underway over the Trump administration's push to keep coal plants running to help power data centers.

"Emerging litigation over data centers under state and federal law will help shape how and where they develop in important ways," said Hari Osofsky, a law professor at Northwestern University.

Data centers are large facilities that house hundreds or thousands of servers, as well as the infrastructure to cool the computing equipment and keep it running. Every time a person asks an AI chatbot a question, a data center runs thousands of calculations to find an instant answer — slurping up undisclosed amounts of water and energy in the process.

Estimates of the number of data centers across the U.S. vary, but [one source puts the number](#) at about 4,000, with most facilities located in Virginia, Texas and California.

In July, President Donald Trump released a sweeping action plan for building out more U.S. data centers to spur AI development, including expediting permits and slashing regulations that could hinder deployment. Trump has also called for streamlining environmental reviews for the facilities and locating them on brownfield and Superfund sites, as well as "appropriate" federal lands.

“As our global competitors race to exploit these technologies, it is a national security imperative for the United States to achieve and maintain unquestioned and unchallenged global technological dominance,” Trump said in the introduction of his AI action plan. “To secure our future, we must harness the full power of American innovation.”

Advocacy groups say developers should proceed with caution. A single data center can use as much energy as an entire city. Expanding facilities means more chemicals infiltrating the water supply from cooling fluid for semiconductors, increased air pollution from construction or revival of fossil fuel-fired plants to power the centers, and higher bills for utility customers paying the price for surging energy demand.

Any one of those elements could open the door for a legal fight.

"The forecasted buildout of AI data centers [is] of a different nature than what we've seen before in terms of size and scale," said Mandy DeRoche, deputy managing attorney of Earthjustice's energy program, during a recent press call.

Earthjustice is among a host of national organizations leading the fight against data centers, including some early lawsuits over federal policies meant to ease development of new facilities.

"The U.S. hasn't seen this type of load growth in quite some time — not this fast and not so large in single locations," DeRoche said.

Trump's energy emergency

One early target in the emerging legal fight over data centers is the Trump administration's decision to order aging coal-fired power plants to remain online.

Opponents claim the directive was executed without adequate proof that the plants are needed to combat growing energy demand from data center development and other sources.

The Department of Energy has issued a number of emergency orders to keep certain plants running past their intended closure dates, and it has cited the president's declared energy emergency as proof of need. The orders come as the Trump administration has sought to bolster the coal industry and shift away from renewable energy.

Advocacy groups say the federal government has provided no evidence to support its claims that there is an energy emergency, and they say customers are facing unnecessarily expensive bills as a result.

The arguments are playing out in cases before the U.S. Court of Appeals for the District of Columbia Circuit.

The appeals court is [currently weighing a challenge](#) brought by the Natural Resources Defense Council against an eleventh-hour emergency order that halted the planned shutdown of two units of Constellation Energy's Eddystone Generating Station in Pennsylvania.

"The Order's emergency declaration cannot withstand even the mildest scrutiny," NRDC attorneys said in their challenge.

A separate lawsuit from Earthjustice and the Sierra Club is opposing a similar DOE emergency order keeping Consumers Energy's J.H. Campbell coal plant in Michigan open.

The Trump administration cited AI as a "new and unexpected source of load growth" requiring more energy for the regional power grid, Midcontinent Independent System Operator, or MISO.

At the time DOE said the Michigan coal plant was necessary, there was a surplus of energy equal to about 10 times the amount of power produced by the facility, environmental challengers said, citing data from MISO.

States' rights

The Trump administration's plans to power data centers have also sparked concerns about potential overstepping of state regulators.

DOE Secretary Chris Wright recently sent a letter to the Federal Energy Regulatory Commission calling on the independent agency to draft a new rule to speed up the connection of large loads, such as AI data centers, to the national grid.

The advance notice of proposed rulemaking to FERC "represents the most massive expansion of federal agency power and control into traditional state matters in a quarter century in the energy field," said former FERC Chair Mark Christie, who now leads William & Mary Law School's new Center for Energy Law and Policy.

Christie, whom Trump appointed to FERC, warned the rule, if finalized, would face significant legal obstacles because there is no statutory authority for FERC to issue the regulation. He said such a decision would run afoul of at least two recent Supreme Court rulings aimed at reining in agency action without express authority from Congress.

In *West Virginia v. EPA*, which limited EPA's power to regulate carbon emissions from the power sector, the Supreme Court found that Congress must explicitly delegate power for agencies to take actions that are politically or economically significant. *Loper Bright v. Raimondo* nixed courts' longstanding deference to agencies' interpretations of ambiguous laws.

Joel Eisen, a law professor at the University of Richmond, called the proposed rule a "particularly interesting and new assertion of jurisdiction by the commission."

For decades, FERC has been reluctant to interfere with state jurisdiction, and it has taken action only when it believes it is improving the transmission system, Eisen said.

"This rulemaking deserves quite a bit of attention," he said.

Some of the main sticking points in the proposal — from power purchase agreements and electricity sales, to local land use approvals — remain outside the federal government's control and won't go away with this rulemaking, wrote Dave Owen, an energy law professor at the University of California College of Law, San Francisco, in an email.

"If FERC actually enacts the kind of rule DOE is asking for, and if it stands up in court (both big ifs), then it could supersede state-regulated utilities' ability to manage the timing of connections" to the grid, he said.

Environmental groups and energy experts are closely tracking the proposal to see how FERC responds.

Endangered species

Environmental groups are also zeroing in on how data center construction could implicate endangered species protections and other state and federal environmental laws.

Earlier this month, the Center for Biological Diversity and other groups [urged the Fish and Wildlife Service](#) to list the recently discovered 2-inch Birmingham darter as threatened or endangered. The request could set the stage for future legal action if FWS agrees to take action to protect the fish species.

The Birmingham darter is found in only a single creek system, which could face increasing pressure from water use from Project Marvel, a 700-acre data center proposed outside of Birmingham, Alabama. Environmental groups note that the data center's water usage isn't yet known, but developers had requested an estimated amount of 2 million gallons per day from the local utility.

"Project Marvel represents an existential threat to the Birmingham darter," the groups wrote in their petition to FWS.

Extinction of the Birmingham darter population near the data center "would represent a profound and irreversible loss to the already limited genetic diversity and small occupied range of this tiny fish," they added.

Owen of the University of California College of Law said that data center developers could face litigation over alleged violations of state laws, as well. At the state level, conflicts are emerging over pricing arrangements and data centers' financial responsibility for grid upgrades and rising utility costs.

Developers must also carefully navigate state and local rules governing water usage, environmental reviews and air quality.

Transparency

Outside the courtroom, environmental groups are also raising concerns about the availability of public information about data centers that are cropping up across the country, often near homes and businesses.

New data centers are "coming at everybody at such a fast pace, and people haven't really had the chance to put something forward more preemptive and proactive," said Jean Su, a senior attorney at the Center for Biological Diversity. "It's only reactive."

The group has issued new policy recommendations calling on officials to seek more information upfront and to weigh potential benefits, such as additional tax revenue, against a bevy of risks such as rising utility rates, fossil fuel energy buildout and increased

water consumption — particularly for facilities in the southwestern U.S. The group also called for data center developers to maximize their use of renewable energy.

"Oftentimes, these data centers are not transparent in what they disclose, so it should be within the prerogative of local governments to be able to say, 'We need you to disclose what is going on,'" Su said.

Andy Bockis, a partner at the law firm Saul Ewing who represents data center developers, said that some of the changes environmental groups are seeking "can't solve every situation."

Data centers need to be able to operate 24/7, and when they are connected to the electrical grid, they need a backup system, often diesel-powered generators. Solar and battery storage come with other drawbacks: Developers need a much larger footprint to build enough solar panels to power a project, and batteries come with fire risks, he said.

"On top of that, I've had some developers tell me, 'Look, all of the good locations have been taken years ago,'" he said. "There is no longer a good location anywhere to build these things."

As for increasing transparency, developers might not know the specifics of their projects upfront as they wait for consecutive approvals, Bockis said. But he also acknowledged that projects generally move faster when developers proactively respond to communities' concerns.

"Folks who are building these projects really need to work on that early collaboration with local agencies and having those conversations about how we can do this responsibly, and educate folks about if we don't have information about X, Y or Z, it's because that comes a little bit later in the project," he said.

"Not because we're trying to hide something," he continued, "but because of the way that these things operate."