The Future of Data Center Power: Federal Policy Trends

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JEFFREY A. MITCHELL, JENA WATSON, J. MICHAEL SHOWALTER, AMY ANTONIOLLI, DEAN A. ROY, ANDREW N. SAWULA, JOHN M. KEBLISH, ANISA OSTAD, NICK KIANPOOR

The federal government is reshaping the rules for how data centers obtain power. In the past four months, the White House, Federal Energy Regulatory Commission (FERC), and US Congress have each taken significant action on data center energy policy that will influence how facilities are sited, powered, and interconnected for years to come.

This alert analyzes these federal developments and their practical implications for developers, operators, and investors.

1. The White House Ratepayer Protection Pledge

On March 4, President Trump issued a **proclamation** establishing the Ratepayer Protection Pledge, under which seven leading US hyperscalers and artificial intelligence (AI) companies committed to ensuring that their data centers' energy needs will not increase household electricity costs for American consumers. The Pledge, first announced during President Trump's State of the Union address, marks a notable shift in federal posture toward data center energy consumption, moving from an earlier emphasis on accelerating AI infrastructure buildout to a policy conscious of consumer and energy impacts. The Pledge contains five core commitments.

- **Self-Funded Generation:** Signatories agreed to fund all new electricity generation required by their facilities — whether by constructing their own power plants, entering into long-term commitments to purchase power from new generation facilities, or acquiring output from newly developed generation assets — rather than drawing incremental power from the existing grid.

— **Full Infrastructure Cost Absorption:** Signatories committed to bearing the full cost of transmission and distribution upgrades necessary to interconnect and serve their facilities.

— **Dedicated Rate Structures:** Signatories agreed to negotiate dedicated rate schedules with their serving utilities and state regulators, accepting minimum payment obligations regardless of actual consumption — effectively functioning as take-or-pay arrangements for electricity service.

— **Community Investment:** Signatories pledged to make local investments in the communities where they operate, including through local hiring commitments and workforce development initiatives.

— **Grid Reliability Coordination:** Signatories committed to coordinating with regional grid operators on reliability planning and, where feasible, making on-site backup generation available to the grid during emergency conditions.

The Pledge is not legally binding on its signatories, and it contains no enforcement mechanism, penalty provisions, or private right of action. However, the accompanying Presidential Proclamation declares that the Pledge's commitments "effectuate the national policy of the United States." State regulators and intervenors may cite the Pledge as evidence of industry-accepted cost allocation principles in rate proceedings. FERC could reference it when evaluating whether proposed interconnection arrangements adequately protect existing ratepayers and communities opposing new data center projects may argue that developers who have not adopted the Pledge's commitments are failing to meet the national policy standard the Proclamation establishes.

2. FERC's New Framework for Co-Located Data Center Loads

FERC took a landmark step in December 2025 when it directed the nation's largest grid operator to establish transparent rules for data centers and other large loads co-located with generating facilities. Under the order, the operator must revise its tariff to require eligible transmission customers serving co-located load to choose from four transmission service options.

— **Network Integration Transmission Service (NITS):** The traditional full-requirements service provides firm access to the operator's transmission system. Co-located loads electing NITS would be treated like any other network load, with corresponding cost allocation obligations.

— **Interim, Non-Firm Transmission Service:** A new service category is available to customers seeking NITS but awaiting completion of the interconnection process. This option provides a bridge for facilities that need to begin operations before their full network integration studies are complete.

— **Firm Contract Demand Transmission Service:** A new firm service option that allows co-located loads to secure guaranteed transmission capacity at a specified contract demand level, providing certainty for facility planning while contributing to transmission cost recovery.

— **Non-Firm Contract Demand Transmission Service:** A new interruptible service option at a lower cost point, suitable for loads with greater operational flexibility or those willing to accept curtailment risk in exchange for reduced transmission charges.

This proceeding stemmed from FERC's February 2025 show-cause **order**, which raised concerns about whether the operator's tariff adequately addresses the rapid growth of co-location arrangements, particularly data centers seeking to connect directly to adjacent power plants to bypass grid

interconnection queues. In February, the operator **proposed** further behind-the-meter reforms, like limiting netting thresholds, as part of its compliance efforts.

Separately, the US Department of Energy **proposed** a rule for interconnecting co-located load to the transmission system, an unusual move as load interconnection has traditionally been governed by state regulators. FERC is expected to address this proposal this year, with affordability concerns at the forefront. As former FERC Chairman Willie L. Phillips **noted**, "the challenge is making sure that [large loads] interconnect in a way that's transparent, predictable and fair to existing customers."

Data center developers pursuing co-location strategies should monitor these proceedings closely and consider how the new transmission service options will affect project economics, timelines, and contractual risk allocation with power plant counterparties.

3. The DATA Act of 2026

On January 8, US Senator Tom Cotton (R-AR) introduced the **DATA Act of 2026**, which would exempt fully off-grid power suppliers from the Federal Power Act and US Department of Energy regulations. If enacted, the legislation would enable data centers and other energy-intensive industries to build dedicated, captive generation capacity without navigating the federal regulatory framework that governs interconnected power facilities.

The bill reflects a fundamentally different approach to data center power than the Ratepayer Protection Pledge. Where the Pledge assumes data centers will remain connected to the grid and focuses on ensuring they pay their fair share, the DATA Act would create a pathway for facilities to disconnect from the grid entirely — avoiding interconnection queues, transmission charges, and capacity market obligations altogether. For developers willing to invest in fully self-sufficient power infrastructure, this could dramatically accelerate project timelines and reduce regulatory complexity.

However, the DATA Act raises its own set of legal and practical questions. Fully off-grid facilities would still be subject to state and local environmental permitting requirements, including Clean Air Act compliance for on-site generation. They would also need to address reliability concerns without the backstop of grid access, potentially requiring significant investment in redundant generation and storage capacity. The bill's prospects in Congress remain uncertain, but it signals a broader policy conversation about whether the traditional utility model can accommodate the pace and scale of data center energy demand.

4. Practical Guidance for Data Center Developers and Operators

In light of these developments, data center developers and operators should consider the following steps.

- **Assess Compliance With the Ratepayer Protection Pledge Framework:** Even for companies that did not sign the Pledge, its principles — self-funded generation, full infrastructure cost absorption, and separate rate structures — are likely to become the baseline expectation for state and local regulatory approvals.
- **Prepare for the Pledge's Downstream Effects:** The Proclamation's "national policy" language is likely to be cited by regulators, intervenors, and communities in rate proceedings,

interconnection disputes, and siting challenges.

— **Monitor FERC Co-Location Proceedings:** The new tariff rules will define the regulatory framework for behind-the-meter and co-location **arrangements** in the nation's largest wholesale market.

— **Evaluate Off-Grid and Self-Supply Alternatives:** The DATA Act, if enacted, would create a new pathway for facilities willing to operate independently of the grid. Developers should assess the technical and financial feasibility of a fully self-sufficient power infrastructure.

If you have any questions, please reach out to your ArentFox Schiff contact or an author of this article. For more insights, visit our **Data Center Legal Solutions** webpage.

Contacts

Jeffrey A. Mitchell

PARTNER

Jena Watson

PARTNER

J. Michael Showalter

PARTNER

Amy Antoniolli

PARTNER AND ENERGY & CLEANTECH INDUSTRY GROUP CO-LEADER

Dean A. Roy

PARTNER

Andrew N. Sawula

PARTNER

John M. Keblish

ASSOCIATE

Anisa Ostad

ASSOCIATE

Nick Kianpoor

ASSOCIATE

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