

PEOPLE VS. MACHINES II: NEW YORK'S STATEWIDE DATA CENTER PAUSE SIGNALS A NEW PHASE OF PROJECT RISK AS PUBLIC OPPOSITION EXPANDS NATIONALLY

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EXECUTIVE SUMMARY

New York's statewide permitting pause marks a significant escalation from local project opposition to state-level regulation. The same concerns previously visible in county and municipal actions—grid capacity, water use, utility costs, environmental impacts, and community benefits—are now shaping statewide policy and may affect project timing, economics, entitlement strategy, and dispute risk.

This week, New York Governor Kathy Hochul signed an executive order temporarily pausing state environmental permitting for covered data center projects for one year while New York develops statewide standards addressing energy demand, environmental impacts, water use, air quality, utility costs, and community benefits. This action makes New York the first state to impose a statewide moratorium on certain large-scale data center developments, marking a significant escalation in the growing public and regulatory backlash against hyperscale data center projects.

In May, we wrote that public opposition had become a material project risk for data center development as counties and municipalities nationwide expanded consideration of potential moratoriums or bans on data center development. New York's action suggests that regulators are increasingly focused not only on the siting of individual projects, but also on the cumulative effects of data center development. The New York action moves the data center opposition trend from the local and county level to the state level.

NEW YORK'S STATEWIDE MORATORIUM

New York's executive order pauses state discretionary environmental permits for new hyperscale data centers while the state develops a Generic Environmental Impact Statement and related regulatory framework. Generic Environmental Impact Statements are used to evaluate the general effects of a type of project, like data centers, while a supplemental environmental review may tier off the general analysis to evaluate site-specific or project-specific impacts. It is anticipated that the Environmental Impact Statement will be used to establish general standards to address environmental impacts associated with data center development. The order applies to covered projects generally understood to involve facilities requiring 50 megawatts or more of power, although the precise effect on any individual project will depend on the project's permitting posture and whether necessary

state permits had already been deemed complete. The Governor also directed Empire State Development to issue a Community Investment Framework within 60 days to establish guidance for local agencies for the negotiation of community benefits as part of any large-scale data center deal, including local infrastructure improvements and community financial support.

The stated rationale closely tracks the concerns that have driven local opposition across the country. The executive order cites unprecedented growth in data center demand driven by artificial intelligence, cloud computing, streaming services, and other computing operations; it also identifies concerns regarding electric load, water use, water quality, air quality, utility costs, and the risk that infrastructure investments for large loads could be shifted to ordinary ratepayers. Governor Hochul also announced an intention to pursue legislation repealing certain tax exemptions for massive data centers, reinforcing that state-level scrutiny may broadly impact project economics.

PUBLIC OPPOSITION IS NO LONGER MERELY LOCAL

The New York action presents a significant expansion to the multi-jurisdictional ways that data center opposition is evolving. Those various mechanisms include:

State-Level Moratorium Proposals, Vetoes, and Study Frameworks

Maine's Legislature passed legislation that would have imposed a temporary moratorium on certain large data centers, but Governor Janet Mills vetoed the bill while stating that a moratorium was appropriate given concerns about environmental and electricity-rate impacts, and that she intended to establish a council to study data center impacts.

Other Texas Counties Continuing to Consider, Reject, or Urge State Action on Moratoria

Hays and Hood Counties considered moratoria or related pauses in response to concerns about water, energy, and local impacts, while Somervell County passed a resolution opposing data center construction until the Texas Legislature addresses the issue.

Electoral Backlash Against Approving Officials

In Festus, Missouri, voters ousted four city council incumbents after approval activity relating to a proposed US\$6 billion data center, reflecting that data center approvals can become election-defining local issues.

Ballot Initiatives Restricting Development Incentives or Banning Data Centers

Port Washington, Wisconsin voters approved a measure requiring voter approval before city leaders may grant large tax-increment financing incentives, a measure prompted by concerns over a proposed data center campus; Monterey Park, California voters later approved a measure prohibiting data centers within the city.

Judicial Invalidation of Data Center Approvals Based on Procedural Defects

The Virginia Court of Appeals invalidated Prince William County's Digital Gateway rezonings after concluding that public notice and advertising requirements were not strictly followed, blocking a major data center development corridor.

Local Abandonment or Rejection of Projects Following Organized Public Opposition

New Brunswick, New Jersey abandoned a proposed 27,000-square-foot data center and restored plans for public park space after public outcry and protest.

Resident Litigation Challenging Rezonings and Approvals

Coweta County, Georgia residents filed suit challenging approval of the proposed Project Sail data center campus, alleging zoning, procedural, due process, and environmental-review defects.

State Legislatures Revisiting Tax Incentives and Cost-Allocation Frameworks

North Carolina lawmakers and Governor Josh Stein have scrutinized data center tax exemptions and ratepayer impacts; the state budget reportedly eliminated an electricity sales-tax exemption for data centers while leaving other incentives in place, and separate legislative proposals would impose requirements intended to prevent large data centers from shifting utility costs to other ratepayers.

Opposition to Energy Infrastructure Needed To Serve Data Centers

In Hilliard, Ohio, residents and city officials have opposed and legally challenged aspects of on-site power infrastructure proposed for a data center campus, including natural gas fuel cells and diesel backup generators.

Large-City Moratoria and Permitting Pauses

Denver approved a one-year moratorium on accepting or processing certain permit and site-development applications for data centers; Seattle unanimously adopted an emergency one year moratorium and policy framework responding to public concern over grid, water, ratepayer, land-use, and public-health impacts; and Oklahoma City adopted a temporary moratorium on new data centers through December 31, 2026, or until zoning-code amendments are approved.

County Pauses in Emerging Data Center Markets

Champaign County, Illinois enacted a one year moratorium on new large-scale data centers while a task force develops zoning and permitting standards.

As these examples illustrate, opposition is no longer confined to one political geography, one level of governmental jurisdiction, one regulatory theory, or one stage of project development. It is appearing as state executive action, county moratoria, municipal permitting freezes, voter initiatives, litigation, tax-policy changes, utility-cost allocation debates, and opposition to supporting energy infrastructure.

NAVIGATING RISK IN A DYNAMIC ENVIRONMENT

For project participants, the takeaway is clear, diligence should include not only conventional land-use and permitting review, but also a jurisdiction-specific assessment of political sentiment, utility capacity, water availability, environmental-justice issues, tax incentive durability, local procedural requirements, and the likelihood of ballot, legislative, or litigation-driven intervention. Site selection and permitting strategy must be coordinated with a location-specific community engagement strategy. Boilerplate force majeure, change-in-law, material adverse change, termination, outside-date, and government-compensation provisions may be ill-suited to a market facing such dynamic risks. Data center development now routinely implicates land use, environmental review, public utility regulation, grid reliability, water resources, tax policy, public affairs, community engagement,

and dispute resolution. These disciplines cannot be addressed sequentially after opposition hardens; they should be coordinated at the earliest stages of site selection, transaction structuring, entitlement strategy, utility interconnection, and public engagement.

OPPORTUNITIES FOR NEW GENERATION

These project delays may benefit longer lead-time projects, like nuclear generation. As detailed in our recent client alert, in June 2026, the New York Public Service Commission issued an Order Establishing a Nuclear Reliability Backbone Process, which was supported by an Advanced Nuclear Policy Options Paper issued by the New York State Energy Research and Development Authority (NYSERDA) and the New York State Department of Public Service (DPS).¹ The Options Paper represents the start of a comprehensive effort by the State to expand its gigawatt-scale nuclear generation capacity, while the data center construction moratorium creates an opportunity for the State to align new generation resources with the anticipated growth in demand from large-scale data center development.

FIELDING A MULTIDISCIPLINARY TEAM

The firm is positioned to assist clients in navigating the evolving risk profile for data center development and resolving disputes if those risks materialize. In addition to its capabilities across public policy, regulatory, environmental, energy, land use, real estate, construction, and transactional disciplines, the firm's US and international Litigation and Dispute Resolution lawyers are adept at evaluating, structuring, and executing strategies aimed at preserving project value, protecting investment-backed expectations, and mitigating regulatory and political risk.

As the New York action shows, the next phase of data center risk may not arise project by project, or county by county. It may arise statewide. Stakeholders that anticipate that shift—and structure, contract, permit, and communicate accordingly—will be better positioned to manage a fast-changing development environment.

For additional insights on the evolving data center landscape, explore the firm's Data Center Deep Dives Webinar Series [here](#) and our related Data Center Alerts [here](#).

FOOTNOTES

¹ [Navigating Nuclear: Updates in New York | HUB | K&L Gates](#)

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