

### Trump Administration Gives Data Centers a Big Push

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As information systems have expanded, the electricity needs of data centers have grown exponentially, largely from crypto-mining and artificial intelligence (AI). Data centers operate at high load factors and require dedicated reliable electricity for significant computation and cooling demands.

For the last few years, many data centers constructed in the U.S. have emphasized their use of renewable energy. With the Administration's change of policy regarding wind and solar generation, and its desire to return to fossil-fuel derived electricity, it has prioritized powering data centers with traditional power resources.

On July 23, 2025, the Trump Administration issued an Executive Order for *Accelerating Federal Permitting of Data Center Infrastructure* (E.O. 14148) ("EO"). The EO defines a "Data Center Project" as "a facility that requires greater than 100 MW of new load dedicated to AI inference, training, simulation, or synthetic data generation."

Simultaneously, the White House issued an action plan for the proliferation of artificial intelligence, entitled *Winning the Race: America's AI Action Plan* (the "Plan"). The EO and Plan discuss streamlining the development of the infrastructure necessary for the expansion of AI systems, primarily data centers and associated energy infrastructure, including transmission lines, natural gas pipelines, substations, natural gas turbines, coal power equipment, nuclear power equipment, geothermal power equipment, and "any other dispatchable baseload energy sources" used to power data centers (collectively, "Qualifying Projects").

Consistent with other actions of this Administration (see, e.g., *Unleashing American Energy* issued on inauguration day (E.O. 14154)), solar and wind energy are omitted from incentives associated with data centers. The recent One Big Beautiful Bill Act further limits incentives for solar and wind energy development.

While the EO and Plan say nothing about energy storage systems, storage might be considered as needed energy infrastructure for data center development. The EO mentions "backup power supply," which could mean battery storage as well as on-site generators. Potentially, solar and wind energy resources coupled with energy storage facilities could meet the criteria for dispatchable baseload energy sources under the EO.

#### Important EO Elements

**Funding Sources for Qualifying Projects.** The Commerce Department and other Federal agencies must identify available sources of financial support, including loans, loan guarantees, grants, tax incentives and offtake agreements, that may be used to support Qualifying Projects. Funding initiatives representing less than 50 percent of total project costs will not be considered "major Federal actions," limiting the review of such actions

under the National Environmental Policy Act (“NEPA”). This certainly will encourage funding at no more than 49.9 percent of project costs, still potentially quite lucrative.

**Streamlined Federal Permitting.** The EO looks toward “rapid and efficient buildout” of data centers and associated energy infrastructure “by easing Federal regulatory burdens,” and designating data center projects as “transparency projects” for expedited review pursuant to the Fixing America’s Surface Transportation Act (FAST-41).

Under the EO, the Council on Environmental Quality (“CEQ”) must identify existing, and establish new, Categorical Exclusions under NEPA to cover data centers and related energy projects, thereby shortcutting environmental review. NEPA’s environmental review has already been limited by the D.C. Circuit’s *Marin Audubon Society v. FAA*, 121 F. 4th 902 (D.C. Cir. 2024); the CEQ’s subsequent removal of the NEPA implementing regulations (90 Fed. Reg. 10610 (February 25, 2025)); and the U.S. Supreme Court’s decision in *Seven County Infrastructure Coalition v. Eagle County*, 605 U.S. \_\_\_ (2025) (lead agencies are not required to look at a project’s upstream and downstream impacts under NEPA).

In addition, the Environmental Protection Agency (“EPA”) is directed to find ways to expedite permitting on Federal and non-Federal land under the Clean Air Act, the Clean Water Act, the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), and the Toxic Substances Control Act, among other relevant environmental laws.

EPA must also develop guidance to expedite CERCLA review if a Qualifying Project is located on a Brownfield or Superfund Site, a positive direction. However, regardless of any reduction in regulatory burden and apart from energy resource needs, the intensive use of water for cooling computing facilities and any attendant thermal generation is significant and must be addressed.

Within 180 days of the date of the EO, the Army Corps of Engineers must review its nationwide permit program issued under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899 “to determine whether an activity-specific nationwide permit is needed to facilitate” Qualifying Projects and to ensure that no Pre-Construction Notification is required for the facility. This is important for the permitting and construction of linear transmission lines in gas, electric and oil industries, which may cross numerous interstate watersheds subject to Federal review.

Finally, the EO states that for a data center project located on Federal land, consultation with the U.S. Fish and Wildlife Service (“USFWS”) under Section 7 of the Endangered Species Act shall be a “programmatic consultation to ensure timely and efficient completion of such consultation.” The USFWS’ proposed rescission of the definition of “harm” under the act [90 Fed. Reg. 16105 (April 17, 2025)], will further limit the extent of the consultation.

**Siting on Federal Lands.** The Departments of Interior, Energy (DOE) and Defense are directed to identify suitable sites on Federal land for development of data centers and associated power generation infrastructure.

On July 24, 2025, just a day after the EO and Plan, the DOE selected four sites for which the agency will solicit the development of data centers to advance AI use: the Idaho National Laboratory; the Oak Ridge Reservation in Tennessee; the Paducah Gaseous Diffusion Plant in Kentucky; and the Savannah River Site in South Carolina.

Shortly before the DOE announcement, a new Interior Department memorandum was issued requiring “all decisions, actions, consultations, and other undertakings” related to the siting of wind and solar energy facilities on Interior-controlled land be approved personally by the Secretary of Interior, another attempt to further deter the use of renewable energy sources for the operation of data centers. As the authors were completing this article, the Secretary of the Interior also issued Order No. 3437, *Ending Preferential Treatment for Unreliable, Foreign Controlled Energy Sources* (July 29, 2025), requiring staff to identify and move to eliminate any regulations or guidance designed to facilitate the development of solar and wind energy resources, claiming that such sources are “expensive, unreliable, foreign-controlled intermittent energy sources....”

**Grid Reliability.** Although not directly addressed in the EO, the Plan discusses the need to “develop a grid to match the pace of AI innovation.” The Plan states all existing electrical assets need to be preserved and that “premature decommissioning of critical power generation resources,” such as coal generation, should be barred. This may provide additional heft to Administration efforts, already underway, to pressure utilities and state regulators not to retire coal-fired generation.

The Plan also urges exploring new solutions to grid reliability, such as advanced grid management technologies and power line upgrades to increase the amount of electricity transmitted along existing routes.

It remains questionable as to whether the EO can break the logjam of electric transmission system improvements required by data centers. One problem is that the definition of “covered components” includes “electrical infrastructure...constructed or otherwise used principally to serve a Data Center Project” (emphasis added). Data centers with on-site generation could find that requests for transmission system improvements that provide power from the grid for less than a majority of the time might not qualify as “principally” for the data center’s service, although there may be contrary arguments as well.

## Concluding Thoughts

If one views hydrocarbons as having a limited future, the Administration’s policy may represent a decision to monetize and maximize consumption of the U.S. hydrocarbon resource base to gain an advantage in AI by trading off environmental review. However, the EO and Plan neglect the fact that the siting of data centers in certain states may still remain significantly restricted due to state laws and regulations designed to curb air pollution and climate impacts. Efforts to force continued operation of coal-fired and natural gas-fired plants that state governments have determined should be retired will face assertions of the state’s inherent police powers retained under the Tenth Amendment.

Moreover, although the Administration’s current suite of actions gives non-solar and non-wind resources potential advantages in powering data center growth, the use of solar and wind energy resources to power data centers remains available, and economic, in certain areas. Additionally, the use of geothermal energy, where available, and perhaps small modular nuclear reactors (if the technology becomes more readily available), coupled with battery or hydrogen storage, may provide clean energy opportunities.

The Administration’s new EO includes both geothermal and nuclear energy as acceptable sources of energy for new data centers going forward. Finally, under the Administration’s policies, energy-efficient natural gas turbines may also be an acceptable power source, recognizing that the policy pendulum could swing in another direction at a later date.

There are perceived international rivalries concerning data center development. Proponents of the EO and the Plan may link implementation to maintaining national security. In like fashion, the European Union is proposing the “Cloud and AI Development Act,” designed to triple Europe’s data center capacity within five to seven years. Given this competition, the rules governing AI and electricity consumption will continue to change over time based on both domestic and international pressures.

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