Davis Polk

New York State enacts data center moratorium

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On July 14, 2026, Governor Kathy Hochul signed Executive Order No. 62, establishing a temporary moratorium on data center permitting in New York State, making New York the first state in the country to impose such restrictions.

Background

On June 4, 2026, the New York State Legislature passed the Responsible Data Center Development Act (S10642/A11560) (Act), imposing a one-year moratorium on state permits for new large data centers with peak demand of 20 megawatts (MW) or more. In addition to the proposed one-year moratorium, the Act tasked the Department of Environmental Conservation (DEC) with preparing an environmental impact report charting the effects of data center development and directs the Public Service Commission to create new electric and water rate classes for large-scale data center developments.

Instead of acting on the legislation, Governor Hochul issued Executive Order No. 62 (Order). The Order responds to the unprecedented demand for data center development in New York, citing nearly 12 gigawatts of data center load requests currently in the NYISO interconnection queue, with more than 8 GW entering in 2025 alone. The Order creates a temporary moratorium on data center permitting and directs multiple state agencies to examine environmental impacts, protect ratepayers, and create a framework for community benefits before new large-scale data center projects can proceed.

What qualifies as a data center

The Order defines data centers as a facility or group of facilities located on the same site or contiguous sites housing servers, associated components, computing, or telecommunications equipment for the storage, processing, distribution, and/or management of data. Characteristics of data centers subject to the Order include computer servers, associated components, or computing or telecommunications equipment which:

- Contain uninterruptible power supply systems, specialized cooling, and/or cybersecurity systems for secure digital infrastructure;
- Provide data storage, cloud computing, and/or content delivery on a continuous 24-hour cycle; and
- Consume or can consume 50 megawatts or more.

This definition specifically excludes:

- Facilities primarily used for manufacturing, research (including quantum computing, biomedical research), education (accredited colleges/universities, Empire AI consortium), or medical care are not subject to the Order.

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Key provisions

Permitting moratorium

- The Order directs the Department of Environmental Conservation (DEC) to hold in abeyance all applications for any discretionary permit, approval, license, or similar permission for the construction or expansion of a data center that are pending or filed after July 14, 2026, unless the application was determined complete before the date of the Order. However, because the Order only applies to discretionary approvals, future projects that only seek ministerial DEC permitting decisions, such as registrations or coverage under existing SPDES General Permits still have a clear path forward.
- Notably, the moratorium does not apply to permits, approvals, licenses or other forms of approval from local governments.

Generic Environmental Impact Statement (GEIS)

- DPS is directed to initiate a formal public process, including public comment and a public hearing, to create a GEIS assessing the potential environmental impacts of data center construction and operation, including energy demand, water use and quality, air quality, disproportionate impacts on disadvantaged communities, and noise.
- The moratorium remains in effect until the Department of Public Service (DPS) submits a final GEIS and associated findings statement under SEQRA.

Community Investment Framework

- Empire State Development (ESD) must, within 60 days of the Order, create and publish a Community Investment Framework addressing:
  - Creation and maintenance of a community investment fund contributed by data center developers or operators for energy affordability efforts and public services (childcare, K-12, infrastructure);
  - Local infrastructure investments (energy distribution, broadband, wastewater);
  - Prevailing wage, project labor agreements, local hiring, and apprenticeships; and
  - Transparency and reporting on economic metrics.

New York Grid Acceleration Fund

- DPS is directed to consider a mechanism requiring data centers to:
  - Make upfront capital contributions to finance grid improvements, participate in demand response, support clean energy procurement, and establish an insurance pool to protect against stranded asset risk; and
  - Fund new clean electric generation and/or battery storage dedicated to their operations and consistent with the State's clean energy goals.

Data Center Interconnection Working Group

- DPS must form a working group, within 60 days of the Order, to identify and resolve issues related to interconnection of data centers and other large loads and provide a report to the Commission within 90 days of the Order. The group will address "beneficiary pays" principles for network upgraded and resource adequacy costs.

Water withdrawal review

- DEC must assess whether new or amended regulations are needed for water withdrawal programs (6 NYCRR Parts 601 and 602) as applied to data centers, with a report due within 12 months.

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Key takeaways

- **For clients with pending DEC applications:** Any application not yet determined complete is now held in abeyance for an indefinite period. Clients should immediately confirm with DEC whether their application was deemed complete before July 14, 2026.
- **For clients in early-stage development:** The moratorium creates significant timeline uncertainty. Clients should consider whether their project can be restructured below the 50 MW threshold or whether an applicable exclusion (research, education, medical) applies.
- **For clients negotiating with localities:** Local government permits are not subject to the moratorium, but localities may use the forthcoming Community Investment Framework as a baseline for negotiations. Clients should anticipate enhanced community benefit expectations, including prevailing wage commitments, local hiring requirements, and community investment fund contributions.
- **For clients managing energy and interconnection:** Expect new cost allocation requirements under “beneficiary pays” principles and potential upfront capital contributions through the Grid Acceleration Fund. Clients should proactively engage with the Interconnection Working Group process and model potential financial exposure.
- **For clients with water-intensive cooling designs:** The 12-month water withdrawal review may result in new permitting or reporting obligations. Clients should evaluate alternative cooling technologies and water reuse strategies now.

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