

Publications

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Data Centers in the Mid-Atlantic Face a New Legal Frontier: “Bring Your Own Generation”

Key Takeaways

- **Governors from Pennsylvania, New Jersey, Maryland and Virginia have proposed a “Bring Your Own Generation” (BYOG) model to fast-track data center approvals and ease pressure on the grid.** The proposal calls for developers to supply their own generation in exchange for accelerated interconnection and facility permitting.
- **While BYOG could meaningfully shorten time-to-power, it cannot function under current law** without significant changes to PJM’s tariff, FERC oversight, and state utility and permitting regimes.
- **Data center and generation developers should begin aligning contracts, procurement strategies and regulatory engagement to prepare for this shift.** Transitional risk is real, and early movers with flexible deal structures will be best positioned.

In a recent eight-page proposal to PJM, the regional grid operator for much of the Mid-Atlantic, governors in Pennsylvania, New Jersey, Maryland and Virginia have called for a fundamental change to how large data centers connect to the grid. Their message is straightforward: to protect the grid, data center developers should be permitted to “bring your own generation” (BYOG) in exchange for fast-track approval of both their facilities and the generation they build.

Can Data Centers Use BYOG to Accelerate Power Delivery?

Supporters of BYOG have argued that it will shorten time-to-power by removing pressure from public grid planning and shifting responsibility to data center developers. That outcome is possible — but **only** if the policy is coupled with additional legal reforms.

Even a well-financed data center cannot accelerate power delivery if transmission upgrades, queue studies and local permitting remain the pacing items. Without PJM tariff changes and statutory fast-track permitting authority, BYOG risks becoming a burden, not a new pathway.

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Where this model becomes attractive for developers is if PJM and the states pair it with:

- priority queue treatment for projects with committed generation;
- conditional energization rights tied to financial security;
- state regulated fast-track siting approvals for associated generation resources; and
- clear transitional relief for projects already in progress.

Under that combined structure, developers who secure generation early could legitimately shorten their timeline to power. BYOG could evolve from a reliability safeguard into a competitive advantage.

Why the Current Legal Framework Must Change

Current law does not permit BYOG without several structural reforms.

First, PJM's tariff and interconnection rules — overseen by the Federal Energy Regulatory Commission (FERC) — do not allow PJM to prioritize or condition load connections on whether the customer has acquired generation. PJM would need to amend its interconnection procedures to permit queue preference, milestone structures and performance obligations tied to generation procurement, which requires stakeholder approval and FERC authorization.

Second, state utility law would need to be updated or interpreted to give regulators the authority to condition interconnection and accelerated service on demonstration of adequate generation resources by the data center customer. While state commissions have opened inquiries into data center impacts, neither has explicit tariff or statutory language enabling utilities to require BYOG commitments as a prerequisite for service. Questions also remain regarding how self-supplied generation affects retail service and participation in competition markets in completely deregulated states like Pennsylvania, New Jersey and Maryland. Even when generation is self-supplied, most data centers will rely on the grid for backup, balancing and transitional power. Regulators must therefore either develop or direct utilities to propose tariffs that credit customer-supplied generation while ensuring fair system cost recovery and alignment with capacity markets and supplier-of-last-resort obligations.

Third, states must establish streamlined permitting pathways for generation resources directly tied to a data center's load. Accelerating siting and permitting requires more than policy intent — it demands statutory and regulatory reforms. In most mid-Atlantic states, separate and sequential permitting across multiple agencies and local jurisdictions creates significant delays. To address this, states need unified or concurrent review processes, lead permitting agencies, firm decision timelines, coordinated environmental and land-use review, and aligned local zoning and state-level energy siting. Pennsylvania's proposed Reliable Energy Siting and Electric Transition (RESET) Board (HB502) — creating a fast-track consortium — exemplifies these reforms, proposing a central authority to consider and approve applications for large generating facilities. Without such reforms, BYOG risks delay at state and local levels, even if PJM and FERC expedite interconnection.

In short, the governors' policy vision can only materialize if PJM, FERC and state regulators and legislatures act together.

What This Means for Projects Already Underway

Developers with land assembled, site plans approved, construction underway or interconnection applications pending face a distinct challenge. If the legal framework changes to permit BYOG in exchange for fast-track approval, it remains uncertain how those new obligations would apply to projects already in the queue. Courts and regulators

are generally reluctant to retroactively impose major new obligations on projects that relied on existing rules, but as policymakers focus on the surge in grid demand, transitional compliance risk is real.

Projects now in the queue could be asked to demonstrate generation coverage, post additional security or accept revised milestones before energization. Those possibilities call for proactive contract strategies. Construction contracts, power-procurement agreements, site leases and financing documents should be reviewed now to ensure they contain robust change-in-law protections, rights to adjust delivery milestones, and the flexibility to procure, assign or substitute firm capacity commitments if required by regulators.

Similarly, developers should open dialogue with lenders early. Traditional capital stacks assume grid availability. If generation must be co-developed for accelerated approval, financing instruments may need to reflect that new reality.

How Data Center and Generation Developers Can Position Themselves Now

For data center developers pursuing sites in Pennsylvania, New Jersey, Virginia or Maryland, four actions are prudent immediately:

1. **Audit existing project documents for regulatory-change and timing-flexibility provisions.** Ensure your agreements give you the ability to adjust if state or PJM rules shift.
2. **Begin sourcing potential generation or firm-capacity solutions early, even on a contingent basis.** This does not mean committing capital today. It does mean lining up options that can be activated quickly if rules change.
3. **Engage in the regulatory process.** Submitting comments to PJM and the state public utility commissions not only helps shape the rules but can support arguments later for transitional treatment.
4. **Engage in the legislative process.** Renewable energy and battery storage can be deployed the fastest of all the sources of new generation. Traditionally, energy projects such as wind, solar and battery storage are permitted at the county level and there are an ever-increasing number of counties that are blocking these projects. All the advantages of BYOG are lost if the generation cannot be permitted, and it will require legislation to permit new independent power generation at the state level.

For developers of generation, the BYOG structure represents a significant opportunity to partner with data center offtakers and potentially fast-track projects. Similar to their potential data center partners, developers of generation should audit their existing project documents and engage in the regulatory and legislative process. The BYOG structure will set off a race for data centers to find dance partners that understand the new rules, can deliver generation projects quickly and that can be flexible on commercial terms.

The Bottom Line

The governors' BYOG proposal signals a break with decades of centralized grid-planning philosophy. It has the potential to reshape data center development economics, accelerate timelines for proactive builders and introduce risk for those who ignore it.

The details will be determined in PJM stakeholder filings, state utility dockets and legislative sessions in 2025 and beyond. Developers who align their legal strategy, contractual rights and power-procurement planning with this emerging model now will be best positioned to navigate and benefit from the coming transition.

