

Publications

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Pennsylvania Executive Order Changes the Regulatory Landscape for Data Center Development

Key Takeaways

- Gov. Josh Shapiro issued an executive order establishing new DEP permitting procedures for data centers with peak demand over 25 MW and linking the more favorable path to GRID compliance.
- The order may affect project schedules, utility-service arrangements, generation procurement, tax exemption assumptions and financing because it connects workstreams that often have proceeded separately.
- Developers should evaluate GRID strategy early and align site control, permitting, utility service, power procurement, customer load ramps and financing milestones around the same development plan.

On Aug. 18, Gov. Josh Shapiro issued Executive Order 2026-05, *Protecting Pennsylvania Consumers from Data Center Impacts*. The Order establishes new Pennsylvania Department of Environmental Protection (DEP) permitting procedures for data centers with peak demand over 25 MW and ties the more favorable permitting path to compliance with the Governor's Responsible Infrastructure Development (GRID) requirements. It also directs the Shapiro Administration to pursue additional measures before the Pennsylvania Public Utility Commission (PUC) affecting grid-connected data centers.

For developers, the significance of the Order extends beyond environmental permitting. It increasingly ties together decisions that may often proceed on separate tracks: site control, utility service, generation procurement, environmental permitting, tax incentives and project financing.

1. DEP Permitting: Two Paths for Projects Over 25 MW

The Order's most immediate effect is on DEP permitting. As a threshold matter, both GRID and non-GRID projects must obtain the applicable local zoning, subdivision and other municipal approvals before DEP may issue the relevant permits. The key distinction is timing: after Aug. 18, data centers with expected peak demand over 25 MW will follow different DEP review procedures depending on whether the developer commits to GRID.

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- Energy
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A developer pursuing the GRID path must:

- Notify DEP of its intent to comply with the GRID Requirements
- Participate in a pre-application meeting to identify the permits and authorizations the project expects to seek
- Execute a project-specific Consent Order and Agreement implementing the GRID Requirements

Once those steps are completed, DEP may review permit applications on a rolling basis rather than waiting for the developer to submit its entire DEP permit package and may issue qualifying permits on a rolling basis once the developer demonstrates consistency with the applicable comprehensive plan and obtains the required zoning, subdivision and other municipal approvals.

The sequence is materially different for a project that does not enter into a GRID agreement. DEP may not begin *reviewing* permit applications until the developer has obtained the required local land-use approvals and any required water-withdrawal or wastewater-discharge authorization. DEP also may not issue permits on a rolling basis and must wait until all necessary DEP applications have been received and reviewed. Those applications are excluded from the Payback and Permit Decision Guarantee programs.

GRID compliance is therefore not stated as a prerequisite to data center development in Pennsylvania. But for projects over 25 MW, declining the GRID path may have meaningful schedule consequences because more of the local and water-related approval process must be completed before DEP review begins.

The Order also removes data center projects from the PA Permit Fast Track Program, including projects that comply with GRID.

2. What Does GRID Require?

In May 2026, the Administration released the GRID Requirements in four areas: energy affordability, transparency and community engagement, workforce and economic development, and environmental protection.

From an energy-development perspective, the most consequential requirement is the project's energy plan. The Administration has described GRID as requiring developers to add or procure new or otherwise incremental electric capacity sufficient to meet the project's demand and load ramp, generally from resources within the same PJM Locational Deliverability Area, while paying the full cost of that capacity. The incremental supply must also include increasing amounts of clean firm energy, reaching 32% by 2035. GRID also requires the project to bear specified costs caused by its interconnection, electric service or load and to comply with applicable PUC filings, regulations and tariffs.

The standards also include significant non-energy commitments, including community outreach and disclosure, workforce and investment requirements, community-benefit planning, and environmental and sustainability measures.

For developers, that means the decision to pursue GRID should be made early as it can affect how the project procures power, structures its development agreements and establishes its commercial milestones.

3. Grid-Connected Projects: Utility Service Alone Is Not the GRID Plan

For a grid-connected project, obtaining a utility commitment for the required load does not by itself address GRID's energy requirement. The developer must also secure qualifying incremental generation on a schedule that supports the project's load ramp. Depending on the project, that may involve developing new generation, contracting with a generation developer, entering into power purchase or similar arrangements, or using a combination of resources.

From a transaction perspective, the utility and generation workstreams must be coordinated and, where appropriate, expressly cross-conditioned. A utility service arrangement is of limited value if the project cannot secure qualifying incremental generation on a corresponding schedule; conversely, a generation commitment should not become fully binding unless the developer has sufficient certainty regarding utility service, site permitting and the customer load ramp. Developers should consider aligning conditions precedent, milestone dates, outside dates and termination rights across utility, generation, site-control and other arrangements.

The Order adds another layer to a project's utility and power-supply strategy. Against the backdrop of the PUC's broader work on large-load tariffs and load interconnection, the Order now directs the Governor's Special Counsel for Energy Affordability to advocate before the PUC for additional measures, including allocation of PUC-jurisdictional interconnection costs and certain PJM reliability backstop costs to data centers. It also calls for utility procedures under which data centers generally would be curtailed ahead of other customers during specified system emergencies unless the data center has secured incremental electric capacity for its entire demand.

Those measures are not themselves new PUC tariffs or rules. The Order directs the Administration to seek their adoption before the Commission. For developers negotiating utility service and power-supply arrangements today, however, the Order reinforces the need to address upgrade costs, security obligations, change in law or tariff risk, curtailment, load-ramp commitments and outside dates.

4. Behind-the-Meter Projects: Different Exposure, Same DEP Threshold

A data center supplied by dedicated, behind-the-meter (BTM) generation may not present the same utility interconnection and curtailment issues as a grid-connected project. Accordingly, the Order's utility-specific provisions may have considerably less impact on a project that is genuinely independent of the grid.

BTM status does not, however, create an exemption from the DEP framework. The Order applies based on the data center's peak demand, not the source of its electricity. A BTM data center exceeding 25 MW therefore faces the same choice regarding the GRID Requirements and DEP permitting process. For such projects, onsite generation may help satisfy GRID's incremental-capacity requirement. The GRID Requirements expressly contemplate co-located and onsite generation, but whether a particular BTM configuration satisfies the energy requirements in full, including the applicable clean firm energy percentages, will depend on the project and implementation of the GRID Requirements.

If a BTM project also seeks backup, standby or other utility service, however, it may also implicate Pennsylvania's developing large-load framework because the PUC has made clear that onsite generation does not exclude an otherwise large load from the framework.

5. Development and Financing Implications

The Order puts a premium on matching obligations across the project documents.

A developer may now be managing a land option or purchase agreement, local entitlement deadlines, DEP permits, a utility interconnection process, incremental-generation commitments, a customer load ramp and financing milestones at the same time. Those agreements should not assume that each workstream will proceed independently.

For new transactions, developers should consider aligning:

- Site-control periods and extension rights with the DEP, utility and generation-development schedules;
- Utility and power-supply milestones with the load ramp;
- Conditions precedent and termination rights with GRID compliance, interconnection, required permits and availability of incremental generation;
- Cost-allocation provisions with potentially evolving utility tariffs, network upgrades and other interconnection costs;
- Offtake and customer commitments with the power and utility capacity actually available at each phase of development; and
- Financing assumptions with GRID compliance strategy and related ongoing commitments.

GRID compliance may also affect project economics as applicants for Pennsylvania's Computer Data Center Equipment sales and use tax exemption must now comply with the GRID Requirements. Developers that have assumed the exemption in project budgets or financing models should therefore confirm the project's eligibility and intended GRID strategy before treating the exemption as a committed source of savings.

In short, the Order makes power strategy a more integral part of Pennsylvania data center development. Grid-connected projects will need to coordinate utility service with a separate GRID-compliant incremental-generation strategy, while BTM projects may have less utility-specific exposure but remain subject to the DEP/GRID framework above 25 MW. In both cases, developers should resolve these issues early enough that permitting, power procurement and financing documents are built around the same development plan.

We are closely monitoring these developments. For questions about how Pennsylvania's data center executive order or related regulatory changes may affect your organization, please contact Christine Soares, Adam Troutwine or the Polsinelli attorney with whom you normally work.