

Data Center Siting Disputes: Navigating a Fragmented Legal Landscape

Kelly A. Monaghan, CPA,
CGFM, CFE, CISA
May 4, 2026



Agency Disclaimer

The views and opinions expressed in this presentation are solely those of the speaker. They do not represent the views of the Pennsylvania Public Utility Commission as an agency, any individual Commissioner, or any affiliated organization.

This presentation is offered in the speaker's personal and professional capacity. It is intended for educational and discussion purposes only.

Why Data Centers?



AI and data centers are all anyone is talking about



Driving electricity demand and prices up



May require infrastructure upgrades affecting rates and reliability



Affordability risks without clear rules and oversight



Already appearing in comments, complaints, and rate cases

Residential and Small Business Concerns

Quality of life issues

Property values

Upward pressure on utility rates

Risk of cost-shifting

Greater affordability strain on low-income and small-business customers

Increased bills without corresponding consumer benefits

Reliability impacts during peak demand or extreme weather

Limited visibility into how data center costs flow into rates

Data Centers are the New NIMBY Issue

Data centers bring large physical and infrastructure footprints

Local communities experience concentrated impacts

Benefits are often regional or corporate, while impacts are local

Concerns include land use, noise, water, power, and emissions

Speed and scale can outpace local planning processes

Opposition often emerges after projects are announced, not before

Twin Utility Constraints: Water and Electricity

Data centers require massive, continuous electricity supply, often exceeding local grid capacity.

Upgrades to generation, transmission, and distribution take years, while electricity costs ultimately flow into customer bills.

Reliability risks increase during peak demand and extreme weather conditions.

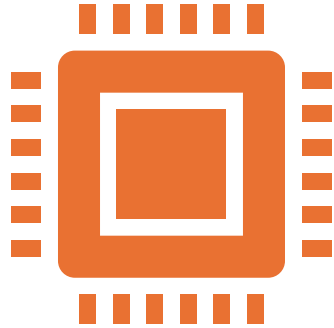
Data centers rely on water for cooling because high-performance chips generate heat and degrade when overheated; evaporative cooling converts clean water into vapor to remove heat.

While some facilities use recycled or non-potable water, many still depend on fresh, local municipal supplies, creating competition with other users and requiring costly treatment and infrastructure capacity.



Water availability may limit where data centers can be built but electricity availability determines whether they can operate at scale.

Framing the Debate



Data centers are the physical backbone of the modern digital economy, yet the legal framework governing where and how they are built is anything but unified.



Instead of a single regulatory regime, siting decisions are shaped by overlapping federal, state, and local authorities that operate independently and sometimes in conflict, creating a system where no single actor controls the outcome.

Fragmented Legal Structure

Data center siting operates within a fragmented, tiered legal structure in which federal market oversight, state regulatory authority, and local land use control each govern different aspects of development. Because these layers function independently, outcomes depend on how they interact rather than on any single governing authority.

Federal Role

Federal priorities do not bind state or local governments, and even within a state, authority is divided across multiple agencies with different mandates. Local governments retain control over zoning and land use, meaning that even where broader policy goals align, projects can still fail at the ground level due to local resistance or permitting decisions.

State Role

States occupy a central but complex position, overseeing environmental permitting, energy policy, and economic incentives while also delegating authority to public utility commissions. These layers operate simultaneously, meaning that state influence is substantial but not always coordinated internally.

Local Role

Local governments retain primary authority over zoning, land use, and permitting decisions, making them the most immediate gatekeepers for data center siting. At the same time, they are the focal point for community opposition, which can ultimately determine whether a project proceeds regardless of broader regulatory approval.

Grid Effects

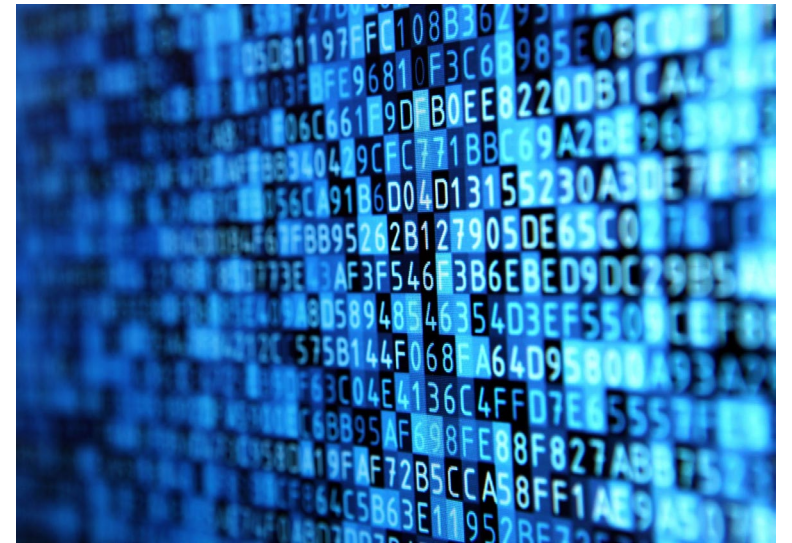
- Large load reality
 - Comparable to small cities
 - Electricity demand projected to triple by 2030
 - Interconnection demand exceeding system capacity
- Backlogs driven by a combination of structural and process constraints
 - Outdated “first-come, first-served” queue design struggles under volume
 - High volume of small and speculative projects clogging the queue
 - Detailed interconnection studies required even for low-impact resources (e.g., small solar) slow overall throughput
- Transmission constraints and limited upgrade capacity further delay approvals
- Large-load customers face significant uncertainty in timing, cost, and feasibility of grid access



Data Limitations

A fundamental challenge underlying all regulatory decisions is the lack of reliable data. There is no centralized registry of data centers, and much of the available information is based on estimates.

Confidentiality agreements and nondisclosure practices further limit transparency, making planning and oversight significantly more difficult.



Water Data, Confidentiality, and Public Records Risk

- Inconsistent measurement methodologies and limited disclosure make it difficult for regulators to fully assess the impact on local water systems.
- Data center water usage is often treated as proprietary or trade secret information
- Limited transparency creates challenges for local governments and public oversight
 - Municipalities may become entangled as **unintentional third parties** in disclosure disputes
 - Risk is heightened where the locality operates the water utility or holds the data
 - Public records requests can conflict with confidentiality agreements
- Example: City of The Dalles denied disclosure of water usage tied to a data center
 - Litigation followed; settlement revealed ~355M gallons used in one year (~29% of city supply)



The screenshot shows the top portion of a news article on the OregonLive website. At the top left, there is a search icon and a 'Set weather' dropdown menu. The main header features the OregonLive logo and 'The Oregonian' name, with a 'Start for \$1' button and a 'Sign in' dropdown to the right. Below the header, the article is categorized under 'OREGON TECH'. The main headline reads: 'The Dalles settles public records lawsuit over Google's data centers, will disclose water use to The Oregonian/OregonLive'. At the bottom of the article preview, it states 'Updated: Feb. 22, 2023, 9:35 a.m. | Published: Dec. 14, 2022, 5:05 p.m.'

The Role of Utility Commissions

Indirect but decisive authority over data center buildouts

Control:

- Rates
- Cost allocation
- Grid access

May function as **de facto gatekeepers**

Managing cost allocation risk:

- Cross-subsidization concerns
- Stranded infrastructure risk
- Speculative demand complicates planning

Private Sector Response

Fragmentation Response

- “Bring Your Own Generation” (BYOG)
- Phased builds
- Off-grid strategies

Limits of Private Solutions

- Still rely on grid for backup
- Still subject to permitting
- May obscure system risk

Litigation Landscape

Rapidly growing body of litigation but immature

Most cases unresolved

Dominated by zoning disputes

Typical Legal Issues

- Zoning and land use challenges
- Conditional use disputes
- Arbitrary and capricious claims
- Preemption conflicts

'The absolute edge of precedent': FERC prepares to take on data centers

By FRANCISCO "A.J." CAMACHO | 04/20/2026 07:26 AM EDT

The commission is pushing to get data centers onto the grid, and fast. The high-stakes move could tip the balance of regulatory power against the states.



Laura Swett, the Trump-appointed chair of the Federal Energy Regulatory Commission, has said she's prepared to "push right

Zoning Authority vs. Preemption: Structural Tension

- **Foundational Doctrine – Village of Euclid v. Ambler Realty Co.**
 - Zoning is a valid exercise of police power, even where it reduces property value, so long as it relates to public welfare.
 - Upheld local authority to separate land uses (e.g., residential vs. industrial) to address safety, noise, and congestion.
 - Land-use restrictions are constitutional unless they are arbitrary or unreasonable.
- **Preemption Framework**
 - Federal, state, and local authority operate as parallel systems.
 - Conflict arises when infrastructure needs (energy, transmission, large loads) intersect with local land-use control.
 - Federal and state law does not expressly preempt data center siting...for now.
- **Counterbalancing Tensions**
 - Local governments: control siting, zoning, and community impacts
 - State/federal actors: drive energy policy, reliability, and infrastructure buildout
 - Result: conflict emerges at the infrastructure layer, where no single authority controls the full outcome

Case Examples: Hilliard, Ohio

The Hilliard, Ohio dispute involves a pre-existing 142-acre Amazon data center complex located in Hilliard, Ohio. Amazon's proposal to install a fuel cell facility to power its existing data center, approved by the Ohio Power Siting Board despite local opposition.

After state approval, the developer withdrew from local zoning review, asserting state preemption, prompting the city to appeal the decision on procedural and statutory grounds. The case remains pending and illustrates how data center development can trigger conflict across state siting authority, local control, and environmental permitting, particularly when behind-the-meter energy solutions are used rather than traditional regulatory pathways.



Photo Credit: iStock

City of Hilliard challenges Amazon fuel cell project at Ohio data center - re

Project would see the installation of 228 natural gas fuel cells with a total capacity of 73MW

By: Zachary Skidmore [Have your say](#)

5

CityBeat

NEWSLETTERS

ARTS & CULTURE FOOD & DRINK MUSIC OPINION ELECTION HQ EVENTS BEST OF CINCINNATI ELECTIONS
Cincinnati News
Ohio News
Digital Issue

NEWS

Ohioans are getting fed up with data centers, state lawmakers are starting to notice

Local Officials Duties Limited

Residents brought a negligence suit against municipal officials when they failed to pursue a municipal service agreement with a data center developer. The court considered the statute's wording and determined that rather than compelling the municipality itself to engage in pre-siting negotiations, the ordinance prohibited a developer from constructing a data center without first signing to a municipal services agreement. The municipality could not be guilty of negligence, because there was **no affirmative duty to act**.

327-449 Hazelnut LLC v. Town of Groton, No. KNL-CV23-6064329-S, 2024 Conn. Super. LEXIS 1110, at *1 (Conn. Super. Ct. June 4, 2024).

Public Comments Can Be Limited

Landowners and homeowner's association sued the Board of Supervisors to block an amendment to a land use plan. The original plan was drafted in 1998 and designated a large area as rural. In 2016, the plan was amended so that the rural land coincided with an overlay for a **data center opportunity zone**. In July 2022, the Planning Commission released its draft amendment to the plan and in September of 2022, held public hearings on the amendment. In the meantime, data center developers purchased land in the opportunity zone and sent a non-public letter to the Planning Commission with proposed changes to the amendment. The landowners sued to block the amendment and alleged that the board did not properly consider public comments. The court declined to create a listen and consider requirement as impracticable.

Oak Valley Homeowners Ass'n v. Prince William Cty. Bd. of Supervisors, 917 S.E.2d 562, 564 (Va. Ct. App. 2025).

Difficult to Demonstrate Harm

Landowners challenged the Board's rezoning of approximately 270 acres to allow for data center development and its amendment of the Data Center Opportunity Zone Overlay District to include the property. The board moved to dismiss, arguing that Ptf. could not demonstrate harm, and even if they could, the issue was within the board's discretion. The Circuit Court dismissed the case and the appeals court affirmed. Although the plaintiffs were able to show harm, they could not overcome VA's standard for rezoning decisions, which is whether the issue is "fairly debatable." Although unpublished and nonprecedential, *Caparoula* provides insight into how courts are beginning to resolve disputes arising from data center siting.

Caparoula v. Bd. of Cnty. Supervisors of Prince William Cnty., No. 1137-24-4, 2025 Va. App. LEXIS 545, at *2 (Va. Ct. App. Sept. 16, 2025).

Data Centers Sue Each Other Over Restrictive Covenants

In Nevada, a data center operator sought to enforce a restrictive covenant against competing colocation facilities and a land developer preparing land for potential future construction. The court found that the restrictive covenant was enforceable as to co-located data centers, but the business in question developed land than data centers. The restrictive covenant did not prevent the land from being developed for the purpose of constructing a data center because the facility type would be determined later, after the site had been prepared. Because the company in question was responsible only for preparing the site, development did not violate the covenant and it was not enjoined from preparing the land for later construction.

Switch, Ltd. v. Nvlco Storey Cnty., LLC, 2024 Nev. Dist. LEXIS 2.

General Policy Tools

Governments need to address policy challenges with coordinated and interdependent tools.

	Tools	Policy Considerations
Economic incentives	Tax incentives, grants, targeted incentives, special contracts, and negotiated development agreements used to attract or steer development based on financial returns	Fast and flexible but can erode the tax base and create competitive “race to the bottom” dynamics
Permitting controls	Moratoria, expedited or standard permitting, and negotiated siting conditions that directly control where, whether, and how development occurs	Offer clear authority but can create delays, inconsistency, and political pressure
Data and oversight systems	Mandatory disclosures, standardized reporting, and lifecycle tracking that enable informed, comparable, and forward-looking decision-making	Support long-term governance but require upfront investment and depend on data quality
Governance and engagement	Public hearings, comment periods, stakeholder engagement, and intergovernmental coordination used to build legitimacy, align interests, and manage conflict	Reduce opposition and litigation risk but can be slow and sometimes performative

Federal Tools

	Tools	Policy Considerations
Information and reporting systems	Federal reporting frameworks for electricity and water use, standardized nomenclature, and expanded ESG disclosures used to create nationwide comparability and support informed, data-driven oversight	Reduce information gaps but are slow to implement and depend on data quality
Market coordination and oversight	Wholesale market oversight by Federal Energy Regulatory Commission, coordination with states on market design and interconnection, and federal studies and joint initiatives used to align fragmented markets and address power availability constraints	Legally durable but indirect and dependent on state cooperation
Grid and infrastructure mechanisms	Interconnection queue reforms, model tariffs and tariff refinements through RTOs like PJM Interconnection, capacity market rule improvements, and reliability oversight by North American Electric Reliability Corporation used to accelerate grid access and improve reliability	Target core bottlenecks but are technically complex and slow to reform
Funding and strategic incentives	Federal funding for energy efficiency and water reduction, support through the Department of Energy, and targeted financial incentives tied to AI and national priorities used to shape development indirectly	Flexible and politically attractive but risk overreliance on subsidies and do not resolve structural constraints

State Policy Tools

	Tools	Policy Considerations
Siting and land use controls	Centralized siting boards or multi-agency councils, expedited or delayed permitting, moratoria, state preemption of local regulation, model zoning ordinances, mandatory disclosures for water and infrastructure impacts, environmental/agricultural/historical assessments, and limits on non-disclosure agreements or required independent studies used to control where and whether projects occur	Provide direct authority and consistency but carry litigation risk and can inflame state-local tensions
Economic and fiscal tools	Tax credits and abatements, grant funding, renewable energy credits, impact fees, revenue sharing, and targeted incentives used to influence developer behavior and project economics	Flexible and politically attractive but risk overuse, market distortion, and “race to the bottom” competition
Governance and capacity building	Statewide working groups, technical assistance to local governments, model ordinances, interagency coordination, design regulations, waivers, lifecycle planning, and remediation funds used to build expertise and align policy across jurisdictions	Improve consistency and long-term planning but are indirect, slower, and dependent on execution
Incentives and strategic investment	Tax credits, abatements, funding for energy and water efficiency, infrastructure and grid investment, and targeted development incentives used to promote growth and innovation	Scalable and influential but risk subsidy dependence and do not resolve core siting or grid constraints

PUC/PSC Tools

	Tools	Policy Considerations
Price signals and cost allocation	Rate design, new rate classes, cost allocation proceedings, financial collateral requirements, long-term demand commitments, exit fees, and anti-circumvention rules used to assign cost responsibility and shape developer behavior through economic signals	Legally durable and grounded in cost causation but are complex, slow, and highly contested
Reliability and system protection	Demand response rules, emergency curtailment authority, virtual power plants or aggregation, load forecasting, and mandatory disclosures used to maintain grid stability and manage large-load impacts	Protect reliability and improve transparency but are often reactive and may be seen as intrusive
Infrastructure planning and buildout	“Shovel-ready” requirements, expedited interconnection, alternative generation studies, development corridors, BYOG/self-provisioning, MW caps, and integrated resource planning used to align infrastructure with actual demand and control buildout timing	Reduce speculative overbuilding but are technical, slow, and risk creating bottlenecks
Regulatory flexibility and implementation	Large load agreements, regulation of behind-the-meter generation, ratepayer classifications, pilot programs, and coordination with utilities and governments used to enable tailored, adaptive solutions and policy experimentation	Flexible and practical but can create inconsistency, capacity strain, and perceptions of favoritism

Local Tools

	Tools	Policy Considerations
Land use and siting controls	Zoning classifications, technology district overlays, buffering, landscaping, screening, height and lot size limits, impervious surface limits, setbacks, and green space requirements used to control the physical footprint and community compatibility of projects	Provide direct, customizable control but can be restrictive, inconsistent, and vulnerable to legal challenge
Infrastructure and environmental controls	Mandatory studies for water usage, environmental impact, traffic, light and noise, coordination with utilities and state agencies, emergency preparedness requirements, and limits on backup generator use used to assess and mitigate local impacts	Protect community resources and create a defensible record but are complex, slow development, and depend on study quality and external coordination
Governance and community negotiation	Public hearings, transparency requirements, community benefit agreements, cost-benefit analysis, ordinance planning, and stakeholder engagement used to build legitimacy and negotiate outcomes with developers	Increase trust and reduce backlash but are political, unpredictable, and can lead to delays or performative engagement

Takeaways

- Data center siting = **multi-level legal problem**
- No single regulator can solve it
- Litigation will shape doctrine in real time
- Coordination is the central challenge

The critical point is that each level of government controls only part of the outcome. Developers must navigate all three simultaneously, optimizing across legal regimes rather than complying with a single, unified framework.