



New York Imposes One-Year Moratorium On Data Center Construction

By Jason Kosek and Tae Young Lee

On Tuesday morning, Gov. Kathy Hochul signed Executive Order 62 (“the Order”). The Order pauses discretionary state permitting for large data centers for up to one year while the Department of Public Service (DPS) and the Department of Environmental Conservation (DEC) build a new regulatory framework. Owners, developers, and contractors with data center projects in New York should read the Order carefully. It reaches further than its text first suggests.

What the Order Does

The Order directs DEC to hold in abeyance any discretionary permit, approval, license, or similar form of permission for the construction or expansion of a data center consuming 50 megawatts or more of energy. The abeyance applies to two categories of applications: those pending before DEC and not yet determined complete as of the Order’s signing, and any new applications filed after that date. DEC’s abeyance runs until DPS submits a final Generic Environmental Impact Statement and associated findings. The final Impact Statement must be submitted within 12 months of this Order.

DPS’s task is not a general inquiry into data centers. The Order directs DPS to examine the impacts of data center interconnection to the electric distribution network, and it does so through an existing proceeding: Case 26-E-0045, Proceeding on Motion of the Commission to Address Interconnection Reforms for Large Loads. Practitioners tracking the timeline should monitor that docket directly. The Governor’s office has stated it expects the process to conclude within a year, but the Order’s own end-trigger is DPS’s findings, not a calendar date. The one-year figure is a target.

DEC also gained a new screening tool. As a condition precedent to any completeness determination, DEC may require an applicant to state in writing whether its application relates to the construction or operation of a data center. This provision does the real work of extending the Order’s reach. DEC does not need a project to announce itself as a “data center” in its application to bring it within the moratorium. DEC can ask, and an applicant’s answer becomes part of the completeness review.

What the Order Does Not Do

Two limits are worth emphasizing to clients weighing project risk.

First, the Order does not touch local approvals. The Order states that the abeyance does not apply to permits, approvals, licenses, or similar forms of permission from local governments. Site plan approval, local zoning relief, and municipal building permits continue on their normal track. A project’s overall timeline still depends on which state permits, if any, it needs beyond the local ones.

Second, the Order does not address renewals or reissuances of permits already granted for projects under construction. The Order’s operative language is limited to applications not yet determined complete. Nothing in the

New York Imposes One-Year Moratorium On Data Center Construction

text extends the abeyance to permit renewals for ongoing construction. DEC's implementing guidance may take a broader view than the text supports, and clients with active construction should confirm DEC's position on their specific permits rather than assume the text controls.

The Legislature's Alternative

Last month, the Legislature passed the Responsible Data Center Development Act (the Act), which would have imposed its own one-year moratorium -- along with energy efficiency goals, a new utility service classification for large data centers, and labor standards for construction. Hochul has not signed the Act. Her office has described the legislation as complex and in need of further work, and she chose an executive order that takes effect immediately rather than wait on further legislative action. The Act's one-year term ran from a fixed effective date. The Order's term runs until DPS reports — a materially different mechanism, even where both point to roughly the same one-year horizon.

Practical Guidance

Owners and contractors should review their contracts now, before a permitting delay materializes into a dispute. Pay particular attention to delay, liquidated damages, force majeure, and indemnification provisions. Confirm which permits, state or local, a given project still needs, and confirm DEC's position on any pending renewal before assuming it falls outside the Order's reach.

New York Imposes One-Year Moratorium On Data Center Construction

Author

[Jason Kosek](#) / jkosek@andersonkill.com

Jason is a shareholder in Anderson Kill's New York office and a member of the firm's Construction, Insurance Recovery, and Commercial Litigation practices. He co-chairs the firm's Data Center Practice Group and Energy & Renewables Industry Group.

[Tae Young Lee](#) / tleee@andersonkill.com

Tae is a Summer Associate in Anderson Kill's New York office. He is currently a 2L at St. John's University School of Law.

ANDERSON KILL

Known as the Policyholder Powerhouse™, Anderson Kill is a pioneer in insurance coverage litigation: we have more experience in litigating, trying and settling insurance coverage disputes than any other law firm. As the only four-time winner of Business Insurance's **Legal Team of the Year**, our firm has an extraordinary record of obtaining insurance coverage for policyholders in connection with all manner of insured losses. The firm has offices in New York, NY; Boston, MA; Los Angeles, CA; Newark, NJ; Philadelphia, PA; Stamford, CT; and Washington, D.C.