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Energy Regulation & Litigation and
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Biden Administration AI Data Center Push

Data center developers, investors, AI companies, and energy companies all stand to benefit from the Administration's support for AI data center development.

With four months left in his administration, President Biden is making a play for the future with a concerted focus on developing infrastructure to support artificial intelligence (AI). A limiting factor in the advancement of AI is the need to build data centers and their associated energy infrastructure to process the extraordinary quantities of information involved in AI computations and development of large language models. Over the past weeks, the Administration has taken several significant steps to promote the development of AI data centers. Data center developers, investors, AI companies, and energy companies all stand to benefit from the Administration's support for AI data center development.

Several months ago, Gibson Dunn formed an interdisciplinary task force of partners specializing in energy, infrastructure, real estate, digital and AI, environment, litigation, national security, and public policy to provide integrated advice to clients who are actively pursuing opportunities in the data center sector. We are closely tracking the Administration's efforts regarding AI data centers and are available to help clients to share their insights with the Administration, as well as to take advantage of the opportunities these high-level initiatives may offer in the coming months.

I. White House Roundtable, Interagency Efforts to Promote AI Data Centers

On September 12, 2024, the Biden Administration convened AI industry leaders, utility companies, and high-level Administration officials to discuss how to ensure the United States

continues to lead in AI. After the roundtable, the White House announced several new initiatives to promote AI in ways that will advance national security and protect the environment.

Most significantly, the Administration launched its Task Force on AI Datacenter Infrastructure to coordinate federal government policy across agencies. Led by the National Economic Council, National Security Council, and the White House Deputy Chief of Staff's office, the Task Force involves the highest levels of the Biden Administration, indicating the importance the Administration is placing on this initiative. The Task Force will work with private sector leaders to identify growth opportunities, as well as with agencies to prioritize AI data center projects.

The Administration also announced that it is tasking the Federal Permitting Improvement Steering Council to work with AI data center developers and federal agencies to set comprehensive timelines for project development, provide technical assistance to the permitting agencies, and distribute funding to agencies to expedite the permitting process for data centers. The U.S. Army Corps of Engineers also will be identifying nationwide permits to expedite the construction of AI data centers. AI data centers require substantial amounts of land, water, and energy—all resources protected or regulated by federal, state, and local permitting regimes. This focus on easing the permitting process for data center developers may give investors some comfort about the shorter-term return on their investments and potentially serve as a model for broader infrastructure permitting reform.

II. Department of Energy Developments

Given AI data centers' need for significant amounts of energy, combined with the Administration's clean-energy goals, it is no surprise that the Department of Energy (DOE) is taking the lead on several significant projects to support AI data centers. Of interest to clients, the DOE is planning a series of convenings with industry stakeholders to discuss the challenges associated with data centers' energy needs.

Moreover, multiple offices within the DOE are working to provide solutions to stakeholders. In August, the DOE Office of Policy developed a list of [resources](#) to help data center developers, owners and operators, and interconnection stakeholders take advantage of tax credits, financing programs, and technical assistance.

In July, the DOE Secretary of Energy Advisory Board convened a Working Group on Powering AI and Data Center Infrastructure and presented its recommendations to Jennifer Granholm, the Secretary of Energy.

The Working Group's [report](#) encouraged the DOE to adopt several key immediate and longer-term impact recommendations for supporting AI-driven data center power demand while limiting harm to existing customers and greenhouse gas emissions. The Working Group's three immediate impact recommendations to the DOE encouraged the DOE to:

- explore flexible siting and geographic distribution of AI large language model data centers in an effort to reduce highly concentrated loads;

- foster dialogue between energy utilities, data center developers and operators, and other key stakeholders to manage current electricity supply bottlenecks and encourage real-time data sharing; and
- rapidly assess reliability, cost, performance, and supply chain issues facing generation, storage, and grid technologies to support data center expansion.

As longer term recommendations, the Working Group encouraged the DOE to:

- establish an AI testbed within the DOE to allow researchers to develop and assess algorithms for energy-efficient AI training, and advance the United States' AI capabilities;
- work with other government agencies and the private sector to develop a standardized and adaptable framework for orchestrating grid services; and
- accelerate and de-risk private investment in emerging technologies, particularly nuclear, geothermal, long-duration storage, and carbon capture and sequestration.

The DOE's focus on providing data center solutions will continue as it works in conjunction with other government agencies and the private sector to drive development, provide incentives, and discover efficiencies with respect to AI-driven data center power demands.

III. Department of Commerce Developments

Along with the DOE, the Department of Commerce will play a significant role in the Administration's efforts to promote data center development. The National Telecommunications and Information Administration (NTIA), a component of the Department of Commerce, has [invited comments](#) on data center security and supporting data center growth in the United States. The NTIA is tasked with advising the President on issues related to the internet economy, including internet infrastructure, cybersecurity, and online privacy. Much of its work focuses on expanding broadband access and adoption, particularly in rural parts of the country, and the NTIA administers grant funding programs to support expansion of broadband infrastructure.

The NTIA will use the comments to inform its work on a comprehensive report for the executive branch offering policy recommendations about how the federal government can promote data center development. The NTIA is coordinating its efforts with the DOE. The Administration seeks comments on a variety of data center development topics including AI data center usage, barriers to data center competition, supply chain vulnerabilities, risk management practices, staffing shortages, and power supply challenges.

Offering comments to the NTIA will allow interested parties to shape the recommendations made within the executive branch on the best path toward maximizing data center infrastructure. The NTIA's advisory role and its coordination with the DOE on this report will allow commenters to reach multiple interested executive agencies through this comment process. Comments are due November 4.

Given the economic, strategic, and national security implications of the AI race, these efforts are likely just the start of a federal government campaign to support AI data centers, regardless of outcome of the November elections. In light of the Administration's keen interest in collaborating

with the private sector on AI data center development, industry participants who want to shape the future of AI and data center policy should take this opportunity to make their voices heard.

Gibson Dunn's Data Center Task Force attorneys are available to assist clients by offering strategic advice; drafting comment letters to agencies; arranging and preparing for high-level executive branch and congressional meetings; and helping clients take advantage of potential opportunities emerging from the rapidly changing regulatory environment.

The following Gibson Dunn lawyers prepared this update: F. Joseph Warin, Eric Feuerstein, Stephenie Gosnell Handler, William R. Hollaway, Ph.D., Michael D. Bopp, Tory Lauterbach, Amanda Neely, David Casazza, and Simon Moskovitz.

Gibson Dunn's lawyers are available to assist in addressing any questions you may have regarding these issues. For additional information about how we may assist you, please contact the Gibson Dunn lawyer with whom you usually work, any leader or member of the firm's Artificial Intelligence, Energy Regulation & Litigation, National Security, Public Policy, Real Estate, or White Collar Defense & Investigations practice groups, or the following authors:

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