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Infrastructure Update

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## DOE's Emergency Order Signals New Role for Data Centers' Backup Power

*The Gibson Dunn [Data Centers and Digital Infrastructure Practice Group](#) is closely monitoring legislative, regulatory, and political developments regarding the growth of data centers. We are prepared to assist clients regarding all aspects of data center development. Please contact one of the Gibson Dunn attorneys listed below or the attorney with whom you usually work if you have any questions.*

### The Emergency Order

On May 18, 2026, the Secretary of Energy (the Secretary) issued [Emergency Order No. 202-26-23](#) (the Order), authorizing PJM Interconnection, L.L.C. (PJM) to direct backup generation resources at data centers and other large load customers to operate as a last resort prior to or during a Level 3 Energy Emergency Alert, the level at which firm load is interrupted and rolling blackouts may occur. The Secretary issued the Order under his authority pursuant to Section 202(c) of the Federal Power Act and Section 301(b) of the Department of Energy (DOE) Organization Act, which allows the Secretary to require generation, delivery, interchange, or transmission of electric energy whenever an emergency exists due to a sudden increase in demand or a shortage of generation facilities.

The Secretary determined that an emergency existed in the PJM region due to an abrupt increase in demand, a shortage of electric energy, and atypically hot mid-May weather conditions. The Order authorized PJM to take emergency action from May 18 through 20, 2026, and explicitly required customers directed to use their backup generation under the Order to

comply with ancillary environmental requirements to the maximum extent feasible while operating under the emergency conditions.

### **Key Insights for Data Center Developers, Landlords, and Tenants**

While the Secretary only assigned the Order legal effect for 3 days, the Secretary's action signals a meaningful trend in DOE's use of its emergency powers. Specifically, when viewed in light of the similar emergency orders the DOE [issued in January 2026](#), the Order suggests that the DOE is increasingly likely to allow grid operators like PJM to rely on private data center backup power as a grid reliability resource that those grid operators, with DOE's approval, can compel into service.

This Order highlights two key trends relating to data center development and operations.

First, if directives like the Order become more common, evaluating data center sites for potential transmission or generation constraints during peak conditions may become an increasingly important consideration in the development process.

Second, data center industry participants may place greater focus on curtailment risk and the use of backup generation when negotiating contracts and operational arrangements.

**The following Gibson Dunn lawyers prepared this update: [Tory Lauterbach](#), [Allison Hellreich](#), and [Jess Rollinson](#).**

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, the authors, any leader or member of the firm's [Data Centers & Digital Infrastructure](#), [Energy Regulation & Litigation](#), or [Real Estate](#) practice groups, or the following data centers teams:

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